Supreme Court, U.S.
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No.

In the Supreme Court of the United States

DENNIS A. REID,

Petitioner,

v.

ALENIA SPAZIO, S.P.A. AND FINMECCANICA, S.P.A.,

Respondents.

On Petition for a Writ of Certiorari to the Fourteenth Court of Appeals of Texas

PETITION FOR A WRIT OF CERTIORARI

CLAUDIA WILSON FROST
Counsel of Record
WILLIAM H. KNULL, III
J. BRETT BUSBY
JEREMY GASTON
Mayer, Brown, Rowe & Maw LLP
700 Louisiana St., Suite 3400
Houston, TX 77002
(713) 238-3000

Counsel for Petitioner

QUESTION PRESENTED

Texas-based USRT developed a plan to commercialize Russian satellite orbital slots. Alenia, a foreign company, valued that plan at $5 billion and agreed to be USRT's joint venture partner to implement it. Alenia led USRT to believe the project was going forward as planned, but in reality, Alenia was developing its own plan to implement the project without USRT. Then, in concert with others, Alenia did precisely that: usurping the entire business opportunity USRT had created while transforming USRT into a shell of a business with no remaining operations of its own. Separately, but during the same time period, Alenia maintained a constant business presence in Texas at the request of other parties under lucrative service agreements it had entered, including one worth $300 million.

The question presented is whether the Constitution permits Texas to assert personal jurisdiction over Alenia in litigation arising from Alenia's breach of fiduciary duty and participation in a conspiracy to oust USRT from the joint venture. In the present case, this question embraces three issues that have divided lower courts regarding the proper way to assess a defendant's forum contacts when deciding issues of personal jurisdiction:

1. Whether courts may ignore a defendant's imputed or actual participation in a conspiracy to harm a forum business.

2. Whether courts may weigh a defendant's forum contacts in isolation from each other.

3. Whether courts may ignore a defendant's voluntary business activities in a forum because another party initially chose the forum as the site for those activities.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Dennis A. Reid respectfully petitions for a writ of certiorari to review the judgment of the Fourteenth Court of Appeals of Texas.

OPINIONS BELOW

The order of the district court denying respondents' special appearance (App. 32-33) is unreported. The opinion of the court of appeals reversing the district court's order (App. 1-30) is reported at 130 S.W.3d 201, and the associated judgment (App. 31) is unreported.

PARTIES TO THE PROCEEDING

The caption includes the names of all parties in the court of appeals. In addition, petitioner derivatively represents two companies: U.S. Russian Telecommunications, LLC and its parent, USRT Holdings, LLC (which has no parent). No publicly-held company owns 10% or more of either company.

JURISDICTION

The court of appeals entered judgment on December 23, 2003. App. 31. Petitioner filed a timely motion for rehearing or en banc consideration, which was denied on April 8, 2004. App. 34-35. Petitioner filed a timely petition for review with the Supreme Court of Texas, which was denied on August 26, 2005. App. 36. Petitioner filed a timely motion for rehearing, which was denied on March 10, 2006. App. 37. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a). See *Calder* v. *Jones*, 465 U.S. 783, 788 n.8 (1984) (holding that an interlocutory state court judgment is "final" under § 1257 if, on the relevant federal issue, the judgment is final and not subject to further state court review).

CONSTITUTIONAL PROVISION INVOLVED

Section 1 of the Fourteenth Amendment to the United States Constitution provides in relevant part that "[n]o State shall * * * deprive any person of life, liberty, or property,

without due process of law * * * ."

STATEMENT

A. Facts Supporting Specific Jurisdiction.

In 1995, Texas scientist Dr. Valery Aksamentov learned from his contacts in the Russian space industry that Russia could not afford to replace several of its geosynchronous satellites that were becoming obsolete. As a result, Russia was at risk of losing valuable international rights to the orbital slots associated with these satellites. Recognizing that this presented an unusual business opportunity, Dr. Aksamentov explained to the Russian government how a partnership with private interests could enable it to keep its orbital slots and obtain new satellites by leasing a portion of the satellites' capacity to commercial interests. SCR 66-68.[1]

Encouraged, Russia enacted legislation allowing this concept to proceed, and Dr. Aksamentov established U.S. Russian Telecommunications, LLC ("USRT") to coordinate the financing, leasing, and operation of new Russian satellites. *Id.* at 67-68. As found by the court of appeals (App. 11-12), USRT's principal place of business was Texas from its inception until August 1999, when its business operations effectively ceased. See *infra* at 5 (explaining ultimate termination of USRT's active managers).

After its formation, USRT sought a financial partner for the satellite project. One of the first entities that expressed interest was the Italian government. To facilitate discussions, the government designated Giorgio Capra, an advisor to its Ministry of Defense, to serve as a project liaison with USRT. Capra was assisted in this role by another Italian, Vincenzo Davide Siniscalchi. CR 5.

Although the government was interested in financing the project, it wanted an Italian company to be involved. Capra

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[1] The district court clerk's record is cited as CR #, and the supplemental clerk's record is cited as SCR #.

introduced USRT to respondent Alenia Spazio, S.p.A., a major player in the worldwide space industry, who also conducted substantial business at the Johnson Space Center in Houston, Texas. CR 5; SCR 450; *infra* Part B. At the time, Alenia Spazio was a division of respondent Finmeccanica, S.p.A., which in turn was owned by the Italian government. SCR 69-70, 175-76, 450. This petition refers to respondents collectively as "Alenia."

In December 1997, USRT presented its confidential business plan to Alenia, who agreed to be USRT's joint-venture partner and promised to obtain government financing for the project. SCR 63, 69-71, 78.

Shortly thereafter, in January 1998, Alenia's representatives traveled to Texas to meet with USRT, negotiate additional terms for the joint venture, outline the parties' rights and responsibilities, and develop a plan of action. Alenia subsequently discussed and negotiated other aspects of the joint venture through calls and correspondence with USRT in Texas. SCR 70-72, 81, 91-92, 95-96, 105, 108-10, 180-83, 307, 367.

Alenia estimated that revenues for the project's initial phase would be $5 billion. Based on the parties' agreements, USRT's share would have been $1.5 billion, which reflected USRT's contribution to the venture in terms of formulating the original concept and putting the deal together, among other things. SCR 68, 70-71.

Things appeared to be going as planned, but in hindsight, Alenia's initial promises were a way to lull USRT into curtailing further search for project financing while Alenia learned the details of USRT's confidential plan and developed a scheme to convert that plan for itself. To that end, Alenia engaged in various delay tactics while maintaining a superficial commitment to the project. First, Alenia engaged USRT in repeated negotiations of subsidiary agreements as a precursor to project financing. SCR 32-37, 39-42, 44-47, 49-

55, 57-61.[2] Then, when financing still was not forthcoming, Alenia loaned USRT $50,000 to cover interim operating expenses as an apparent show of good faith. *Id.* at 19, 74, 108-10. Finally, during that summer, project liaison Capra and his assistant Siniscalchi began suggesting to USRT that the Italian government might be more willing to provide project financing to Alenia if USRT was owned in name by an Italian. By the fall, this suggestion became an ultimatum. *Id.* at 71.

Given a lack of other financing options at this stage and a fear that Russia might give the project to others if USRT did not come through, USRT's owners eventually agreed to transfer the company's shares to a holding company owned by Capra in exchange for a $300 million stake in USRT's future revenues, to be paid from the first revenues earned from the project. SCR 377.

Although USRT's ownership structure had changed, the company retained certain key managers, including Dr. Aksamentov, who became USRT's Chief Operating Officer for Russian Affairs, and Jon Reed, a former manager who became USRT's President. Also at that time, petitioner Dennis A. Reid became USRT's Chief Financial Officer. In addition, both he and USRT's President received a minority interest in the holding company itself. SCR 66, 123, 137.

Despite the change in ownership, USRT still appeared to be positioned to earn substantial fees from the satellite project for its former and current owners. Unfortunately, however, the "required" sale of USRT to obtain project financing

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[2] One of those agreements provided that disputes arising in connection with it would be subject to arbitration in England. SCR 53-54. An enforceable arbitration clause would be a relevant fact in any minimum-contacts analysis, but Alenia did not seek a finding that the clause was enforceable in the trial court and disclaimed that the present dispute was subject to mandatory arbitration by contending that the cited agreements were "precontractual" and not "binding" and that the appropriate forum for this dispute was not in a chosen arbitral forum, but rather in Italy. CR 78, 184, 195.

had been the first step in Alenia's plan to prevent USRT from earning any project fees. Specifically, after distancing most of USRT's former owners and management from further control of the company, Alenia offered USRT's remaining management a $20+ million kickback to transfer USRT's satellite project rights to Alenia. SCR 124-25.

Such a deal would have been personally lucrative for the individual managers, but it was not in USRT's best interests because it would prevent USRT from earning satellite revenues for itself or its former owners, who were owed "best efforts" on the $300 million obligation described above. Consequently, both USRT's President and its CFO refused to participate in Alenia's plan. Given Capra's majority ownership of the new holding company, their resistance ultimately proved futile, and in the fall of 1999, Capra had them fired by Siniscalchi, who had become USRT's Chief Operating Officer. SCR 123-25, 377.

Alenia still owed joint-venture obligations to USRT, but it was now free, at least as a practical matter, to usurp the business opportunity USRT had created because USRT's remaining management (Capra and Siniscalchi) was loyal to Alenia rather than USRT. To that end, Alenia proceeded to commercialize Russian satellites slots without USRT, launching the first satellite in late 1999. Since then, several additional satellites have been or are planned to be launched in accordance with USRT's original plan, to the substantial detriment of USRT and its former and present owners, including petitioner. SCR 125, 276.

B. Facts Supporting General Jurisdiction.

Before the events giving rise to this dispute, Alenia contracted to perform ongoing activities and services at the Johnson Space Center in Texas in connection with Alenia's work on the International Space Station. SCR 196-99. Alenia's primary contract was a $300 million agreement with the Italian Space Agency ("ISA"), which Alenia characterized as one of its "most important" contracts. *Id.* at 258. Under that contract, Alenia agreed to maintain a "continuous and constant

presence" at the Johnson Space Center in Texas. *Id.* at 454. Alenia met this obligation by stationing certain employees in Texas on a permanent basis. *Id.* at 306.

In addition to those permanent Texas employees, Alenia sent numerous other employees to Texas to perform work related to the International Space Station, both under the ISA contract as well as multi-million dollar contracts it had with the European Space Agency and a German company. SCR 197-99. Specifically, between 1998 and 2002, Alenia sent over a hundred employees to Texas for individual stays averaging between one and three weeks each to support Alenia's work on the International Space Station. *Id.* at 298-306, 322-33. Finally, to support Alenia's work in Texas during this time, sixty Alenia employees regularly directed phone, fax, mail, or email communications to individuals at the Johnson Space Center in Texas. *Id.* at 306-18, 335-40, 342-52.

C. Procedural History.

In March 2002, petitioner filed suit on behalf of USRT in Texas district court, raising derivative claims against Alenia, Capra, and Siniscalchi, including claims for civil conspiracy and breach of fiduciary duty. Capra never appeared and Siniscalchi was non-suited because of a bankruptcy. Alenia challenged personal jurisdiction by a special appearance, which the trial court heard and denied. CR 2-14, 15, 66, 180; App. 32-33.

In a divided opinion, the court of appeals reversed. The majority first considered whether Alenia had established minimum contacts with Texas to support the assertion of specific jurisdiction. App. 8-18. On that front, the court held that several of Alenia's Texas contacts did not support jurisdiction because none standing alone was enough to establish minimum contacts:

- Alenia's formation of a joint venture with USRT, a Texas business, did not support jurisdiction because "[c]ontracting with a Texas entity alone does not satisfy the minimum-contacts requirement." App. 13.

- Alenia's project-related communications directed at USRT in Texas did not support jurisdiction because "numerous telephone and facsimile communications with people in Texas relating to an alleged contract do not establish minimum contacts." *Ibid.*
- Alenia's loan of funds to USRT did not support jurisdiction because "sending funds to Texas is not determinative." *Ibid.*

In addition, the court held that Alenia's in-state negotiations of a subsidiary agreement with USRT did not support jurisdiction because it had been superseded by a later agreement. App. 14. As to all of these Texas contacts, the court held that the same analysis applied regardless of which substantive claim was at issue. *Id.* at 14 n.10.

The court then held that Alenia's launch of a satellite without USRT in late 1999 did not support jurisdiction. App. 15-16. The court reasoned that, even if Alenia's pursuit of the satellite project was a breach of fiduciary duty, it had not occurred in Texas, and the associated harm to USRT had not been directed at Texas because the launch occurred after USRT's Texas operations ceased in August 1999. *Ibid.*

The court also held that specific jurisdiction could not be based on Alenia's participation in a conspiracy to oust USRT from the joint venture. On that front, the court acknowledged that Alenia's proposed kickback to USRT's management was arguable evidence of a conspiracy, App. 4, 15-16, but held that such a conspiracy was irrelevant because:

- Alenia's conspiratorial conduct did not occur in Texas (App. 16);
- the conduct of Alenia's co-conspirators could not be imputed to Alenia (*id.* at 15-16), citing *National Industrial Sand Association* v. *Gibson*, 897 S.W.2d 769, 773 (Tex. 1995) (orig. proceeding), for the proposition that an "alleged co-conspirator's contacts with Texas cannot be counted as contact[s] of other alleged co-conspirators"; and

- Alenia's *own* participation in a conspiracy to harm a Texas business could not be used to establish specific jurisdiction. App. 16 n.12 (rejecting proposition that "a defendant who participates in a conspiracy known to impact Texas has satisfied the requirements for specific jurisdiction").

The court next considered the question of general jurisdiction. App. 18-25. It acknowledged that a defendant's maintenance of "a permanent general business office through which it solicits business in Texas * * * weigh[s] strongly in favor of general jurisdiction," but held that Alenia did not maintain such an office in Texas because it did not use its office at the Johnson Space Center "to promote or market its goods or services in Texas[] or for any purpose other than supporting the Space Station Project." *Id.* at 21.

The court then considered Alenia's in-state activities under the service agreements it had with foreign entities. App. 22-25. The court recognized that Alenia knew in advance that it would have to perform work ***in*** Texas under those agreements. Yet it held that Alenia's resulting Texas presence did not support general jurisdiction because a third party, rather than Alenia, had initially chosen Texas as the site for Alenia's services. *Ibid.*

Finally, the majority held that asserting personal jurisdiction over Alenia would be unreasonable given traditional notions of fair play and substantial justice. App. 25-29. It concluded that Texas had no significant interest in the dispute because USRT had had no Texas operations since August 1999. *Id.* at 27. The court also found that some witnesses were not in Texas; that litigation in Texas would burden Alenia; that a Texas judgment for the plaintiff might not be effective relief because it might not be honored in Italy; and that asserting jurisdiction would raise foreign-relations concerns given the multinational nature of the satellite project. *Id.* at 28.[3]

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[3] Petitioner submits that the court of appeals' fair play analysis was

Justice Edelman dissented from the court of appeals' judgment but did not file a written opinion. App. 30. The court of appeals denied petitioner's motions for rehearing and en banc consideration. App. 34-35. The Supreme Court of Texas denied petitioner's petition for review and motion for rehearing. App. 36-37.

APPLICABLE LEGAL STANDARD

Under the Due Process Clause, state courts may assert personal jurisdiction over a nonresident defendant if the defendant has established "minimum contacts" with the state

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erroneous, but that issue is not further discussed herein because it does not implicate a conflict of authority among lower courts on the underlying legal standard and, as such, does not provide a substantial basis for this Court's review. Even so, it is important to note that the court of appeals' fair play determination is not a basis to deny review because it does not independently support the court's judgment. This is because the proper resolution of the fairness issue depends as a threshold matter on a correct resolution of the minimum contacts question. For example, a defendant's burden of proving that jurisdiction is unfair is significantly heightened once minimum contacts are found. See *Asahi Metal Indus. Co.* v. *Super. Ct. of Cal.*, 480 U.S. 102, 114 (1987) ("When minimum contacts have been established, often the interests of the plaintiff and the forum in the exercise of jurisdiction will justify even the serious burdens placed on the alien defendant."); *Burger King Corp.* v. *Rudzewicz*, 471 U.S. 462, 477 (1985) ("[W]here a defendant who purposefully has directed his activities at forum residents seeks to defeat jurisdiction, he must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable."). As such, if this Court grants the petition and ultimately holds that the court of appeals erred in failing to find minimum contacts, the fairness issue would need to be re-assessed, either by this Court or the court of appeals on remand. If this petition is granted, petitioner will brief the fairness issue since this Court could address it as fairly included in the question presented: "[W]hether the Constitution permits Texas to assert personal jurisdiction over Alenia * * * ." *Supra* at I.

and "maintenance of the suit does not offend 'traditional notions of fair play and substantial justice' " *Int'l Shoe Co.* v. *Washington*, 326 U.S. 310, 316 (1945). The federal "minimum contacts" standard is at issue here because the personal jurisdiction of Texas state courts extends to the limits of federal due process. See *Am. Type Culture Collection, Inc.* v. *Coleman*, 83 S.W.3d 801, 806 (Tex. 2002).

Under federal law, a defendant establishes minimum contacts with a forum when it "purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Burger King Corp.* v. *Rudzewicz*, 471 U.S. 462, 475 (1985) (internal quotations marks omitted). Such "purposeful availment" occurs when a defendant deliberately conducts significant activities in the forum, creates continuing obligations with forum residents, or intentionally targets forum residents through tortious out-of-state activity. See *id.* at 475-76; *Calder* v. *Jones*, 465 U.S. 783, 789-90 (1984).

When conducting minimum contacts analyses, courts often use the concepts of "specific" and "general" jurisdiction. "Specific jurisdiction" denotes jurisdiction for a particular case. Such jurisdiction exists when litigation arises from or relates to the defendant's minimum contacts. *Burger King*, 471 U.S. at 472-73. In contrast, "general jurisdiction" denotes jurisdiction for any case against a particular defendant. General jurisdiction exists if a defendant's forum contacts are continuous and systematic, whether they relate to particular litigation or not. *Id.* at 473 n.15.

REASONS FOR GRANTING THE PETITION

USRT, a Texas business, developed an innovative plan to commercialize Russian satellite orbital slots. Alenia valued that plan at more than $5 billion and agreed to be USRT's joint venture partner to implement the plan and share in those revenues. Alenia's subsequent actions suggested the venture would go forward as planned: Alenia traveled to Texas to negotiate a subsidiary agreement, directed project-related communications to USRT over a period of months as the par-

ties negotiated other subsidiary agreements, and loaned USRT operating funds to keep it going as project financing was continually delayed.

In reality, Alenia's forum and forum-directed actions were the first step in an orchestrated plan to usurp the entire business opportunity USRT had created – a plan that eventually turned USRT into an empty shell with no operations of its own, thereby leaving Alenia "free" to implement the satellite project without it.

Separately, but during the same time period, Alenia conducted continuous and systematic business ***in*** Texas under service agreements it had with foreign parties.

On these facts, the trial court found it could assert personal jurisdiction over Alenia, but a divided panel of the court of appeals reversed, holding that Alenia had not established minimum contacts with Texas to support specific or general jurisdiction.

The majority's holding was a foregone conclusion given its flawed analysis. In terms of specific jurisdiction, the majority examined Alenia's primary Texas contacts in isolation from each other and the litigation as a whole. Then the majority ignored Alenia's imputed and actual participation in a conspiracy to harm its Texas partner, USRT. This led the majority to excuse Alenia's ultimate breach of fiduciary duty because that breach conveniently occurred after the conspiracy had shut USRT down.

On the general jurisdiction issue, the majority ignored Alenia's continuous and systematic Texas contacts that arose under service agreements with other entities because a third party had chosen Texas as the worksite, even though Alenia's Texas presence nonetheless resulted from Alenia's voluntary decision to conduct business in the forum through activities that invoked the benefits and protections of Texas law.

As explained below, the court of appeals' analysis implicate multiple splits of authority concerning the proper way to assess a defendant's forum contacts in resolving questions of

personal jurisdiction. In addition, the court's analysis is facially unsound because it allows a foreign defendant to assume fiduciary obligations to a forum business, purposefully cultivate that relationship through forum and forum-directed activities, breach those obligations through actions that destroy the forum business, and separately conduct other substantial business activities in the forum, all without being called to the forum to account for its tortious conduct.

Because the court of appeals' decision implicates multiple splits of authority on recurring constitutional issues and does so in a way that leads to unsound results, this Court should grant the petition and reverse the court of appeals' judgment.

I. Appellate courts are divided on whether a defendant's imputed or actual participation in a conspiracy to harm a forum business supports specific jurisdiction.

A conspiracy commonly is defined as "[a]n agreement by two or more persons to commit an unlawful act, coupled with an intent to achieve the agreement's objective, and (in most states) action or conduct that furthers the agreement." BLACK'S LAW DICTIONARY 329 (8th ed. 2004). In Texas, like most jurisdictions, "each co-conspirator [in a civil conspiracy] is responsible for the action of any of the co-conspirators which is in furtherance of the unlawful combination." *Akin* v. *Dahl*, 661 S.W.2d 917, 921 (Tex. 1983); see, *e.g.*, WILLIAM L. PROSSER, HANDBOOK OF THE LAW OF Torts § 46, at 322-24 (5th ed. 1984). The imposition of liability for the unlawful acts of co-conspirators is based on the concept that, when an individual joins a conspiracy, he ratifies the prior acts of his co-conspirators and appoints them as agents for their future acts. As explained by Judge Learned Hand:

> "When men enter into an agreement for an unlawful end, they become ad hoc agents for one another, and have made a 'partnership in crime.' What one does pursuant to their common purpose, all do * * * ."

Van Riper v. *United States*, 13 F.2d 961, 967 (2d Cir. 1926).

When litigation arises in connection with a conspiracy, that conspiracy provides two potential bases for establishing personal jurisdiction over a defendant conspirator. First, if the acts of the defendant's co-conspirators may be imputed to the defendant, those acts can increase the universe of forum and forum-directed contacts a court must consider in a minimum contacts analysis. See, *e.g.*, *Textor* v. *Bd. of Regents*, 711 F.2d 1387, 1392-93 (7th Cir. 1983) ("The 'conspiracy theory' of personal jurisdiction is based on the 'time honored notion that the acts of [a] conspirator in furtherance of a conspiracy may be attributed to the other members of the conspiracy.' ").[4] Second, insofar as a defendant's ***own*** participation in a conspiracy represents intentionally tortious activity, that tortious conduct would support the assertion of personal jurisdiction in the forum where it occurred or where it was directed. See *Calder*, 465 U.S. at 789-90.

These two potential bases for jurisdiction are distinct because the first relies on concepts of agency to impute the actions of one conspirator to another, while the second focuses on the direction of a defendant's own intentionally tortious conduct. To see how these differences could arise in practice, consider a conspiracy between businesses in California and Texas whose object is to improperly obtain trade secrets from a New York business. Under an imputation theory, the acts of the California business in California could be attributed to the Texas business and provide a basis for jurisdiction over it in California. In contrast, under an actual participation theory, the Texas business's own role in the conspiracy could constitute intentionally tortious activity directed at New York and provide a basis for jurisdiction over it in New York. As next explained, lower appellate courts are divided on whether

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[4] *Cf. Burger King*, 471 U.S. at 479 n.22 ("[W]hen commercial activities are carried on in behalf of an out-of-state party those activities may sometimes be ascribed to the party [for personal jurisdiction purposes], at least where he is a primary participan[t] in the enterprise and has acted purposefully in directing those activities." (internal quotation marks and citations omitted)).

either of these bases for establishing personal jurisdiction comports with federal due process.

Imputation.—One circuit and the appellate courts of nine States have held that due process allows the imputation of a conspirator's forum contacts to his co-conspirators. See *Textor*, 711 F.2d at 1392-93; *Mackey* v. *Compass Mktg., Inc.*, 892 A.2d 479, 487-92 (Md.), *petition for cert. filed*, 74 U.S.L.W. 3655 (U.S. May 10, 2006) (No. 05-1433); *Santa Fe Techs., Inc.* v. *Argus Networks, Inc.*, 42 P.3d 1221, 1233-34 (N.M. Ct. App. 2001); *Chenault* v. *Walk[illegible]* 36 S.W.3d 45, 53-54 (Tenn. 2001); *Execu-Tech Bus. Sys., Inc.* v. *New Oji Paper Co.*, 752 So. 2d 582, 583-84, 586 (Fla. 2000); *Cameron* v. *Owens-Corning Fiberglas Corp.*, 695 N.E.2d 572, 577-78 (Ill. App. Ct. 1998); *Rudo* v. *Stubbs*, 472 S.E.2d 515, 517 (Ga. Ct. App. 1996); *Istituto Bancario Italiano SpA* v. *Hunter Eng'g Co.*, 449 A.2d 210, 225 (Del. 1982); *Reeves* v. *Phillips*, 388 N.Y.S.2d 294, 294 (N.Y. App. Div. 1976).

With one exception,[5] each of the above cases imputed the forum contacts of one conspirator to a defendant co-conspirator, asserted personal jurisdiction over the defendant co-conspirator, and held that the assertion of jurisdiction comported with federal due process. See, *e.g.*, *New Oji Paper*, 752 So. 2d at 585-86. There, the Supreme Court of Florida upheld the assertion of personal jurisdiction against a foreign defendant who had conspired with others to fix the wholesale price of thermal fax paper. *Ibid.* Although the plaintiff had not shown that the defendant had sold any paper in Florida at an inflated price, the court nevertheless held that jurisdiction was proper through imputation because the defendant's conspirators had sold such paper in Florida. *Ibid.*

In conflict with the above cases, the Supreme Court of Texas, along with appellate courts in Washington and Cali-

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[5] *Mackey* held that imputation did not violate due process but had no occasion to actually impute contacts to a defendant because the court's jurisdiction had been invoked solely to answer a question of state law certified by a federal district court. 892 A.2d at 481.

fornia, have rejected the imputation theory as inconsistent with federal due process. See *Nat'l Indus. Sand Ass'n* v. *Gibson*, 897 S.W.2d 769 (Tex. 1995) (orig. proceeding); *Hewitt* v. *Hewitt*, 896 P.2d 1312, 1315-16 (Wash. Ct. App. 1995); *Kaiser Aetna* v. *Deal*, 86 Cal. App. 3d 896, 901 (Cal. Ct. App. 1978).

Actual Participation.—Four state appellate courts have held that a defendant's participation in a conspiracy to harm a forum resident constitutes intentionally tortious conduct that can said to be "directed" at the forum:

- *Istituto Bancario Italiano SpA* v. *Hunter Eng'g Co.*, 449 A.2d 210, 225 (Del. 1982) ("[A] defendant who has so voluntarily participated in a conspiracy with knowledge of its acts in or effects in the forum state can be said to have purposefully availed himself of the privilege of conducting activities in the forum state, thereby fairly invoking the benefits and burdens of its laws.").
- *Santa Fe Techs., Inc.* v. *Argus Networks, Inc.*, 42 P.3d 1221, 1233-34 (N.M. Ct. App. 2001) (following *Instituto Bancario Italiano*, 449 A.2d at 225).
- *Rudo* v. *Stubbs*, 472 S.E.2d 515, 517 (Ga. App. 1996) ("When the purpose of a conspiracy is to commit an intentional tort against a [forum resident], all of the co-conspirators are purposefully directing their activities toward [the forum] and should reasonably anticipate being haled into court here.").
- *Hunt* v. *Nev. State Bank*, 172 N.W.2d 292, 312 (Minn. 1969) ("[T]o suggest that it is unfair to require [the defendants] to respond to an action in this jurisdiction would seem to say that they may rely on our contract law to uphold the terms of lawful agreements but that they may not be required to defend an action based on injury to our citizens as a result of [the defendants'] unlawful agreement.").

In conflict, the Supreme Court of Texas has broadly held

that due process concerns prevent it from "recogniz[ing] the assertion of personal jurisdiction over a nonresident defendant based solely upon the effects or consequences of an alleged conspiracy." *Nat'l Indus. Sand*, 897 S.W.2d at 773.

* * *

Both of the above splits are implicated here because the underlying facts (notably, the coerced sale of USRT by Capra and Siniscalchi, Alenia's proposed bribe to USRT's management, the termination of those managers who would not go along by Capra and Siniscalchi, and Alenia's subsequent launch of a satellite without USRT) provide circumstantial evidence that these parties conspired to remove USRT from the joint venture, thereby breaching the fiduciary duties they owed to it.[6] As such, in jurisdictions where a defendant's own participation in a conspiracy may be used to establish personal jurisdiction, Alenia's proposed bribe and subsequent pursuit of the satellite project without USRT would have been treated as tortious, forum-directed conduct that was relevant to the jurisdictional inquiry. Likewise, in jurisdictions where one conspirator's actions may be imputed to his co-conspirators, the actions of Capra and Siniscalchi in terminating USRT's loyal management and inducing the initial sale of USRT through false pretenses would have been imputed to Alenia, thus increasing the number of tortious, forum-directed contacts relevant to the jurisdictional inquiry.

The court of appeals agreed that Alenia's proposed bribe to obtain USRT's project rights provided arguable evidence of a conspiracy to oust USRT from the joint venture. App. 4, 15. Nevertheless, the court ignored this evidence of Alenia's own participation in the conspiracy while USRT still had Texas operations based on its view that a defendant's "participat[ion] in a conspiracy known to impact Texas" does not

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[6] Capra and Siniscalchi owed fiduciary duties to USRT as corporate officers, while Alenia owed such duties to USRT as its joint venture partner. See *Rankin* v. *Naftalis*, 557 S.W.2d 940, 945 (Tex. 1977).

serve as a basis to establish specific jurisdiction.[7] *Id.* at 16 n.12. In addition, the court refused to impute to Alenia any acts of its co-conspirators (Capra and Siniscalchi) because the court believed it was precluded from doing so under *National Industrial Sand*. *Id.* at 15.[8]

These holdings greatly affected the court's minimum contacts analysis. Most notably, they prevented the court from giving any weight to a key fact supporting specific jurisdiction: Alenia's pursuit of the satellite project without USRT. In any other situation, such a breach of a fiduciary duty would provide a basis for jurisdiction all by itself.[9] Here, however, the court viewed that breach as jurisdictionally irrelevant because it occurred ***after*** the conspiracy had shut down USRT.

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[7] The court of appeals noted that it is unknown whether Capra and Siniscalchi ever executed a formal transfer of USRT's project rights to Alenia, App. 17, suggesting that the tortious character of Alenia's conduct might depend on the existence of such a transfer. Such a suggestion is flawed, however, because Alenia's conduct achieved the same result whether it induced Capra and Siniscalchi to execute a formal transfer or merely to refrain from asserting USRT's project rights as Alenia pursued the project without it.

[8] In its imputation analysis, the court of appeals discussed only one potential Texas contact involving Alenia's co-conspirators (a phone call from Siniscalchi). App. 15. The court's reliance on *National Industrial Sand*, however, makes clear that it also believed it was precluded from imputing to Alenia any Texas-directed contacts of Siniscalchi or Capra, which would include their coerced sale of USRT and termination of USRT's loyal management.

[9] See, *e.g.*, *Burger King*, 471 U.S. at 473 ("[P]arties who reach out beyond one state and create continuing relationships . . . with citizens of another state' are subject to regulation and sanctions in the other state for the consequences of their activities." (internal quotation marks omitted)); *ibid.* ("A State generally has a manifest interest in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors." (internal quotation marks omitted)).

App. 17. But it defies common sense that Alenia can participate in a conspiracy to usurp the business opportunity developed by its Texas partner, yet incur no jurisdictional consequences so long as that overall scheme is not completed until its partner has been effectively silenced by the same conspiracy. If the court of appeals been able to given any weight to Alenia's actual and imputed participation in the conspiracy to oust USRT from the joint venture, such an unsound result would not have occurred.

Because the court of appeals' decision implicates two related but distinct due process issues that have divided appellate courts, this Court should grant this petition. Because parties like Alenia should not be able to disclaim the consequences of the conspiracies they participate in or the actions of their co-conspirators in furtherance of them, this Court should reverse the court of appeals' judgment.

II. Appellate courts are divided on whether a defendant's forum contacts may be weighed in isolation when assessing personal jurisdiction.

Appellate courts are divided on how to assess a defendant's forum and forum-directed contacts that relate to particular litigation. One method is to consider all such contacts collectively. At least four circuits follow this approach:

- *Mid-America Tablewares, Inc.* v. *Mogi Trading Co.*, 100 F.3d 1353, 1360-62 (7th Cir. 1996).

In *Mogi Trading*, a Japanese defendant traveled to Wisconsin for "preliminary discussions" with a potential customer, then sent follow-up faxes and product samples to it. *Id.* at 1361. In litigation concerning the parties' agreement, the Seventh Circuit found that these facts established minimum contacts because "[v]iewed collectively" they established that the defendant's "conduct * * * reflected a purposeful effort to obtain [the plaintiff's] business." *Ibid.* The court stressed that the defendant's trip to the forum "must be considered in conjunction with [the defendant's] other efforts toward obtaining [the plaintiff's] business." *Ibid.*

- *Northrup King Co.* v. *Compania Productora Semillas Algodoneras Selectas, S.A.*, 51 F.3d 1383, 1388 (8th Cir. 1995).

In *Northrup King*, a Spanish defendant attended meetings in Minnesota with the plaintiff and directed written communications to it regarding the sale of certain seeds. *Id.* at 1385-86. In litigation concerning those sales, the Eighth Circuit rejected the defendant's "attempt[] to treat each category of [its] numerous and significant communications separately":

> "[A]lthough [the defendant] correctly notes that letters and faxes alone do not establish personal jurisdiction, in conjunction with other contacts they may support the exercise of personal jurisdiction. In determining whether there is personal jurisdiction, the courts consider the defendant's contacts with the forum in the aggregate, not individually; they look at the totality of the circumstances. * * * Although [the defendant] contends that the meetings in [the forum] and some of the letters had nothing to do with the subject matter of this litigation * * * they were an essential part of the course of dealing between the two companies that resulted in the [relevant] sales * * * . [T]hey show that [the defendant] purposefully availed itself of the privilege of conducting activities within [the forum] * * * by seeking out [the plaintiff] in [the forum], endeavoring to foster a continuation of the business relationship that [the defendant] enjoyed with the previous owner of [the plaintiff's line of business], including the purchase of [the product], and carrying out the transaction."

Id. at 1388-89 (internal quotation marks and citations omitted).

- *Yahoo! Inc.* v. *La Ligue Contre Le Racisme*, 433 F.3d 1199, 1207-11 (9th Cir. 2006) (per curiam) (en banc), *cert. denied*, 74 U.S.L.W. 3599 (U.S. May 30, 2006) (No. 05-1302).

In *Yahoo!*, the California plaintiff received a cease-and-desist letter from a French defendant and was served in California with documents from a French lawsuit brought by that defendant. 433 F.3d at 1201-02. The defendant also had obtained interim orders from the French court purporting to enjoin aspects of the plaintiff's business in California. *Id.* at 1202-04. The plaintiff filed suit, seeking a declaration that the foreign orders were unenforceable. *Id.* at 1204. A majority of the en banc Ninth Circuit held that California could assert jurisdiction over the French defendant based on the court orders when "considered in conjunction" with the cease-and-desist letter and service documents. *Id.* at 1208. The court expressly held that neither the letter nor the service documents would have supported personal jurisdiction themselves. *Ibid.*

- *Polythane Sys., Inc.* v. *Marina Ventures Int'l, Ltd.*, 993 F.2d 1201, 1205-06 (5th Cir. 1993).

In *Polythane Systems*, the defendants were Maryland businesses who built marinas in Maryland using foam bought from the plaintiff, a Texas business. *Id.* at 1204. The litigation concerned the alleged defectiveness of the foam after the marinas collapsed in Maryland. *Ibid.* The plaintiff made the foam in Texas, transferred title to the foam in Texas when selling it to the defendants, and received payments from them in Texas. *Id.* at 1204-05. The defendants also had engaged a Texas business to apply the foam in Maryland. *Ibid.* The Fifth Circuit held that Texas had personal jurisdiction over the defendants because "[a]ggregating the [defendants'] contacts with Texas, it is clear that their connections were deliberate, rather than fortuitous, so that the possible need to invoke the benefits and protections of the forum's laws was reasonably foreseeable." *Id.* at 1206 (internal quotation marks omitted)).

In contrast to this collective approach, several Texas appellate courts routinely consider a defendant's contacts in isolation from each other when assessing specific jurisdiction:

- *Magnolia Gas Co.* v. *Knight Equip. & Mfg. Corp.*,

994 S.W.2d 684, 691-92 (Tex. App.—San Antonio 1998, no pet.), *disapproved on other grounds by BMC Software Belgium, N.V.* v. *Marchand*, 83 S.W.3d 789, 794 n.1 (Tex. 2002).

In *Magnolia Gas*, the court concluded that out-of-state defendants who contracted with a Texas resident, sent payments to a Texas resident, and partially performed a contract in Texas "did not purposefully avail themselves of the benefits and protections of Texas law" because "[m]erely contracting with a Texas corporation does not satisfy the minimum contacts requirement," "payments sent to the forum state are not determinative," "minimum contacts may not be satisfied by merely engaging in communications with a Texas corporation during performance of the contract," and "partial performance of a contract in Texas is not the *sine qua non* of personal jurisdiction." 994 S.W.2d at 691-92.

- *TeleVentures, Inc.* v. *Int'l Game Tech.*, 12 S.W.3d 900, 908-12 (Tex. App.—Austin 2000, pet. denied).

This case concerned an agreement between a Texas plaintiff and an out-of-state defendant that was to be partially performed in Texas; in addition, the plaintiff had prepared a business summary at the defendant's request "to serve as a marketing tool and to solicit and attract interest from third-party investors." *Id.* at 904-05, 909. The court held that the defendant had not established minimum contacts because "merely contracting with a Texas corporation does not satisfy the minimum-contacts requirement," "partial performance of a contract in Texas is not the *sine qua non* of personal jurisdiction," and the defendant's "request [for the business summary] does not establish jurisdiction." *Id.* at 908-09 (internal quotation marks omitted).

The plaintiff also had argued that numerous phone, mail, and facsimile contacts between it and the defendant established minimum contacts. *Id.* at 910. The defendant "admit[ted] that decisions regarding the [parties'] project were made while in communication with" the Texas plaintiff, *ibid.*, but the court found these contacts insufficient to

establish jurisdiction. *See ibid.* ("Minimum contacts may not be satisfied by merely engaging in communications with a Texas corporation during performance of a contract.").

- *Shell Compañia Argentina de Petroleo, S.A.* v. *Reef Exploration, Inc.*, 84 S.W.3d 830, 838-40 (Tex. App.—Houston [1st Dist.] 2002, pet. denied).

In *Reef Exploration*, the plaintiff asserted that Texas had personal jurisdiction over a foreign defendant in litigation concerning the defendant's purchase of stock previously owned by the plaintiff. *Id.* at 834-35. The defendant had been a party to an agreement with Texas connections and had conducted related due diligence activities that had Texas connections, as well, but the court held that minimum contacts had not been established. *Id.* at 838-39. In so holding, the court considered the contacts arising from the agreement separately from those arising from the due diligence, *ibid.*, and then considered the due-diligence contacts separately from each other. *See id.* at 839 ("[P]ayments sent to the forum state are not determinative."); *ibid.* ("[E]ngaging in negotiations with a party's attorney is not enough to establish minimum contacts.").

* * *

The court of appeals did not deny that Alenia had invoked the benefits and protections of forum law through several forum and forum-directed activities, including: (1) forming a joint venture with a Texas business, (2) directing project-related communications to a Texas business, (3) loaning funds to a Texas business, and (4) conducting business negotiations in Texas on an agreement related to the litigation. Nevertheless, as in the above Texas cases, the court of appeals weighed these contacts separately from each other and the rest of the litigation. As to (1), (2), and (3), the court held that none supported jurisdiction because none was sufficient, standing alone, to establish minimum contacts:

- "Contracting with a Texas entity alone does not satisfy the minimum-contacts requirement." App. 13.

- "[N]umerous telephone and facsimile communications with people in Texas relating to an alleged contract do not establish minimum contacts." *Ibid.*
- "[S]ending funds to Texas is not determinative." *Ibid.*

The court then concluded that Alenia's in-state negotiation of an agreement related to the joint venture was irrelevant because it was later superseded by another agreement between the parties. App. 14. If the prior agreement may be considered in a vacuum, such an analysis might make sense. Viewed in context, however, Alenia's in-state negotiations further demonstrated its purposeful efforts to cultivate a fiduciary relationship with an entity it later betrayed. Moreover, those efforts in particular "enhance[d]" and "reinforced" Alenia's affiliation with Texas given that they occurred ***in*** the forum. *Burger King*, 471 U.S. at 476, 482.

By viewing Alenia's Texas contacts in isolation from each other and the rest of the litigation, the court of appeals contravened the underlying due process standard. The relevant question is not whether one of a defendant's forum or forum-directed contacts establishes "minimum contacts" by itself. The question is whether a defendant should reasonably anticipate being called to the forum to defend itself in litigation related to its forum and forum-directed conduct. See *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 297 (1980). As recognized by the Fifth, Seventh, Eighth, and Ninth Circuits, that kind of determination requires a collective examination of a defendant's contacts because the existence of multiple, related contacts increases and reinforces the foreseeability of litigation.

Here, by isolating Alenia's forum contacts from each other and the litigation as a whole, the court of appeals cut down each tree while ignoring the forest: that Alenia repeatedly invoked the benefits and protections of forum law to develop a close relationship with a Texas business that it later betrayed. Viewed in that context, Alenia's contacts provide a compelling basis for jurisdiction. See *Burger King*, 471 U.S. at 475-76 ("[W]here the defendant * * * has created 'continu-

ing obligations' between himself and residents of the forum, he manifestly has availed himself of the privilege of conducting business there, and because his activities are shielded by 'the benefits and protections' of the forum's laws it is presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well." (citations omitted)).

Because the court of appeals' decision conflicts with the underlying due process standard, implicates the minority view of a longstanding split of authority, and leads to the unsound result that a foreign defendant need not defend itself in litigation related to its purposeful attempts to cultivate a joint-venture relationship with a partner it later betrays, this petition should be granted and the judgment below reversed.

III. Appellate courts are divided on whether a defendant's voluntary business activities in a forum may be ignored if a third party initially chose the forum.

A defendant establishes minimum contacts to support general jurisdiction if its contacts with a forum are "continuous and systematic." *Helicopteros Nacionales de Colombia, S.A.* v. *Hall,* 466 U.S. 408, 414-16 & n.9 (1984). Alenia met this standard because it contractually agreed to maintain a "continuous and constant presence" in Texas under a contract worth $300 million dollars and then fulfilled that obligation by stationing full-time employees in Texas. In addition, Alenia supported its "continuous and constant" Texas presence through hundreds of trips to Texas and out-of-state communications directed at Texas. By maintaining and supporting this in-state presence, Alenia purposefully availed itself of the privilege of conducting business in Texas on a continuous and systematic basis.

The court of appeals did not deny that Alenia's contacts were continuous and systematic but held they should be ignored because a third party, rather than Alenia, had chosen Texas as the site for the services Alenia had agreed to per-

form under its service contracts.[10] App. 22. The court reasoned that, although Alenia knew in advance that its contractual performance required work in Texas, *ibid.*, the third party's choice of Texas somehow transformed Alenia's subsequent in-state conduct into "unilateral third-party activity" that cannot be considered in a minimum contacts analysis. See *Burger King*, 471 U.S. at 474 ("The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State." (internal quotation marks omitted)).

The court of appeals' holding profoundly distorts an otherwise sound principle. Properly understood, the unilateral activity principle just means that a third party's forum contacts cannot be attributed to the defendant if there is only a unilateral relationship between the third party and the defendant. For example, if a California resident travels to Texas and, out of the blue, calls a Michigan resident, the call would be a Texas contact for the California resident, but it would not be a Texas contact for the Michigan resident because it resulted from the unilateral actions of the California resident.

In contrast, assume the California resident offered to pay the Michigan resident to do work in Texas and the Michigan resident voluntarily agreed to do so. The California resident's choice of Texas as the worksite could still be classified as "unilateral third-party activity," but the Michigan resident's subsequent work in Texas would not. It would not be third-party activity because it would be the first-party actions of the Michigan resident himself. It would not be unilateral because it would have resulted from the Michigan resident's

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[10] The court also found that Alenia did not solicit business from Texas residents through a Texas office. App. 21. That holding does not independently support the court of appeals' judgment, however, because a defendant may invoke the benefits and protections of a forum's law on a continuous and systematic basis by doing substantial business in the forum, regardless of whether it solicits business from forum residents. See *Burger King*, 471 U.S. at 475-76.

voluntary decision to create a bilateral agreement by accepting an offer of work from another.

To be sure, this suggests that a foreign defendant must accept certain jurisdictional consequences when it voluntarily assumes obligations that require it to work in a forum chosen by another. But that makes sense: by voluntarily working ***in*** the forum, the defendant necessarily invokes the benefits and protections of the forum's law – regardless of who initially chose the forum – so long as the defendant's presence in the forum is ultimately a result of its own voluntary decision to enter such an agreement. Any other view would let a foreign defendant establish a continuous and systematic business presence in a forum for its own financial gain and accept the benefits and protections of forum law, yet avoid any jurisdictional consequences for its activities by claiming that a voluntarily-entered contract was the "unilateral" reason for its being there.

Such an unsound interpretation of the unilateral activity principle has been correctly rejected by five circuits:

- *Mesalic* v. *Fiberfloat Corp.*, 897 F.2d 696, 700-01 (3d Cir. 1990).

In *Mesalic*, the plaintiff sued an out-of-state manufacturer for breach of contract involving the purchase of a boat. *Id.* at 697-98. The Third Circuit held that the defendant's visit to the forum was not unilateral activity even though it had been requested by the plaintiff:

> "We conclude that the fact that [the defendant] delivered the boat to [the forum] and repaired the vessel in [the forum] as an accommodation to [the plaintiff] does not preclude such contacts from being sufficient minimum contacts to establish personal jurisdiction. * * * While the contract between the parties may not have obligated [the defendant] to deliver and repair the boat in [the forum], nonetheless they did. * * * This conduct – accommodating the buyer – is not surprising in view of today's commercial realities."

Id. at 700.

- *Myers* v. *John Deere Ltd.*, 683 F.2d 270, 272 (8th Cir. 1982).

In *Myers*, a Canadian defendant loaded a wooden pallet onto a train bound for Iowa. *Id.* at 271. In North Dakota, the pallet collapsed and injured a customs inspector, who sued the defendant. *Ibid.* In upholding jurisdiction over the defendant in North Dakota, the Eight Circuit rejected the defendant's argument that the presence of the pallet in North Dakota had been the "unilateral activity" of another, for even if the defendant did not control the train's route, it knew the train was going through North Dakota and could have made other shipping arrangements if it did not want its pallet to travel through that forum. *Id.* at 272.

- *Trinity Indus., Inc.* v. *Myers & Assocs., Ltd.*, 41 F.3d 229, 231 (5th Cir. 1995).

In *Trinity Industries*, the Fifth Circuit held that Texas could assert jurisdiction over an out-of-state law firm in an action by a Texas client. *Id.* at 230. Although the Texas client unilaterally solicited the services of the law firm (and thus unilaterally determined that the law firm's obligations would attach in Texas rather than elsewhere), the Fifth Circuit held that this did not prevent the law firm's representation of the client from being a relevant Texas contact:

> "That [the plaintiff] initially solicited the services of the [defendant] firm does not change this result. Although personal jurisdiction does not lie when the defendant cannot control vulnerability to suit, the defendants at bar voluntarily assumed and continued the obligation of representing the Texas client."

Id. at 231.

- *Bank Brussels Lambert* v. *Fiddler Gonzalez & Rodriguez*, 305 F.3d 120, 128-29 (2d Cir. 2002).

As in *Trinity Industries*, the defendant in *Bank Brussels Lambert* was an out-of-state law firm that agreed to represent

a forum resident. 305 F.3d at 123. In finding personal jurisdiction over the defendant, the Second Circuit rejected the argument that the defendant's New York representation was "unilateral activity" because, among other reasons, it was a relationship "the firm voluntarily undertook." *Id.* at 128-29.

- *Madison Consulting Group* v. *South Carolina*, 752 F.2d 1193, 1204 (7th Cir. 1985).

In *Madison Consulting Group*, the plaintiff agreed to perform consulting services for the defendants and then performed them in Wisconsin. *Id.* at 1195. The court treated the plaintiff's performance as a relevant Wisconsin contact of the defendants because that location had been "contemplated by the defendants at the time of contracting." *Id.* at 1204. In so holding, the court rejected the argument that the plaintiff's actions should be considered unilateral activity. See *id.* at 1206 (Swygert, J., concurring in judgment).

In conflict with the above cases is the court of appeals' view that the unilateral activity principle reaches all acts performed in the forum at the behest of a third party, even those performed by the defendant himself. As explained above, this view represents an unsound distortion of the underlying due process principle. Moreover, this erroneous view is entrenched in Texas jurisprudence. See *Am. Type Culture Collection, Inc.* v. *Coleman*, 83 S.W.3d 801, 809 (Tex. 2002) ("[The defendant's] attendance at * * * five Texas conferences does not support the exercise of general jurisdiction. The record reflects that the scientific community, not [the defendant], selected the conference locations."); *Reyes* v. *Marine Drilling Cos.*, 944 S.W.2d 401, 404-05 (Tex. App.—Houston [14th Dist.] 1997, no writ) (finding no minimum contacts where the defendant "sent representatives to companies in Texas when visits were necessitated by [third-party] contractual obligations to the federal government"); *Conner* v. *ContiCarriers & Terminals, Inc.*, 944 S.W.2d 405, 417-18 (Tex. App.—Houston [14th Dist.] 1997, no writ) (plurality op.) (ignoring fact that defendant operated barges that traveled to Texas because "barge loads only go to Texas upon

customer request"). In addition, the Florida court of appeals has similarly misconstrued the unilateral activity principle in a case nearly identical to *Conner*. See *Am. Overseas Marine Corp.* v. *Patterson*, 632 So. 2d 1124, 1126-30 (Fla. Dist. Ct. App. 1994).[11]

Because the court of appeals ignored Alenia's continuous and systematic activities in Texas on an unsound basis that implicates a longstanding split of authority on the scope of an important due process principle, this Court should grant this petition and reverse the court of appeals' judgment.

IV. This case presents a good vehicle for resolving these conflicts of authority.

Since *International Shoe*, personal jurisdiction has become one of the most litigated issues in state and federal courts. *See* Russell J. Weintraub, *A Map Out of the Personal Jurisdiction Labyrinth*, 28 U.C. DAVIS L. REV. 531, 531 (1995). One explanation for this litigation boom is that the standards for assessing minimum contacts are neither clear nor easy to apply. This case presents a good vehicle to help clarify some of those standards because the court of appeals' judgment implicates the minority view on multiple, longstanding conflicts of authority. In addition, the fact that both the trial court and one member of the appellate panel determined that Texas could assert jurisdiction over Alenia suggests that a resolution of any one of these issues in petitioner's favor is likely to be outcome determinative.

Petitioner notes that another pending petition raises the imputation issue, see *Mackey* v. *Compass Mktg., Inc.*, No. 05-1433, which further demonstrates the recurring importance of that particular question. The present case presents a better vehicle for this Court, however, because it implicates addi-

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[11] The relevant customer in *Patterson* was the U.S. military rather than a private party, but that does not change the analysis because in both *Patterson* and *Conner*, the defendant boat operators apparently had agreed to take their boats wherever customers requested.

tional due process issues that have divided lower courts. In addition, because *Mackey* arises from a federal district court's certification of a state law issue to a state supreme court, there may be a threshold question as to whether the relevant federal issue there is final for purposes of 28 U.S.C. § 1257.

The present case also is a good example of the way in which Texas jurisprudence has made it increasingly difficult for Texas businesses and individuals to obtain relief when harmed by out-of-state defendants. The isolated examination of a defendant's forum contacts causes Texas courts to incorrectly discount forum activities that collectively evidence purposeful availment. At the same time, perceived due process restrictions prevent Texas courts from giving any weight to a defendant's imputed or actual participation in a conspiracy to harm a forum resident. As can be seen, these methods of analysis make it a simple matter to hold that the assertion of personal jurisdiction is unconstitutional in cases involving even the most deceptive forum-directed conduct.

Finally, this case reflects an internally inconsistent approach to federal due process. Although Texas courts will not impute the contacts of one conspirator to his co-conspirator because of due process concerns, those same courts allow foreign defendants to impute their own forum contacts to a third party who asked them to come to the forum, thereby allowing defendants like Alenia to work in the forum and invoke the benefits and protections of forum law in order to earn hundreds of millions of dollars on important contracts, all while avoiding any jurisdictional repercussions.

For these reasons, this case presents a good vehicle for resolving multiple splits of authority on recurring federal due process issues of substantial importance to litigants in both state and federal courts.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

CLAUDIA WILSON FROST
Counsel of Record
WILLIAM H. KNULL, III
J. BRETT BUSBY
JEREMY GASTON
Mayer, Brown, Rowe & Maw LLP
700 Louisiana St., Suite 3400
Houston, TX 77002
(713) 238-3000

Counsel for Petitioner

JUNE 2006

In The

Fourteenth Court of Appeals

NO. 14-03-00366-CV

ALENIA SPAZIO, S.P.A. AND FINMECCANICA, S.P.A., Appellants

V.

DENNIS A. REID, Appellee

On Appeal from the 281st District Court
Harris County, Texas
Trial Court Cause No. 02-12305

MAJORITY OPINION

Appellants Alenia Spazio, S.p.A. and Finmeccanica, S.p.A. (collectively, the "Italian Companies") bring this interlocutory appeal from the trial court's order denying their special appearances in a lawsuit filed by appellee Dennis A. Reid ("Reid"). We reverse the trial court's order and remand with instructions to dismiss the claims against the Italian Companies for lack of personal jurisdiction.

I. FACTUAL AND PROCEDURAL BACKGROUND

Reid, a Canadian citizen, brought the underlying suit asserting a host of derivative claims against several defendants, including the Italian Companies — two foreign-resident corporations organized under the laws of Italy and having their headquarters and principal places of business in Rome, Italy. The claims involve an alleged business venture for the commercialization of Russian satellites and orbital slots.

The dispute arose from Russia's need to replace several obsolete satellites to avoid losing certain of its geosynchronous orbital slots. The Russian Satellite Communications Company ("RSCC") was responsible for allocating and licensing Russian satellite communication frequencies. Dr. Valery Aksamentov, a Russian space scientist who lived and worked in Houston, Texas, learned from a relative who worked for RSCC that Russia might lose certain orbital slots because it could not afford to replace several obsolete satellites. After learning about this situation, Aksamentov developed a plan to commercialize these orbital slots and then, with funding from outside Russia, build, launch, and operate new satellites to maintain them. This plan was called the Gorizont Satellite Replacement Program ("Plan"). Aksamentov worked with RSCC to obtain approvals from the Russian government to commercialize these orbital slots. In 1997, Aksamentov and others formed U.S. Russian Telecommunications, L.L.C. ("USRT"), a Delaware limited-liability company, to further develop the Plan, which included the launching and building of satellites to fill the orbital slots.

According to Reid's pleading, in 1997, USRT and the Italian government began discussing funding for the Plan. Admiral Giorgio Capra of the Italian Navy was present during these discussions. Capra soon brought the Alenia Spazio division of Finmeccanica, S.p.A.[1] into the discussions. Communications concerning a potential business relationship between Alenia and USRT ensued. Phone calls were made

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[1] We refer to the two corporate appellants in this action as the "Italian Companies." We note, however, that during the time period giving rise to Reid's claims, Alenia Spazio, S.p.A., which we refer to as "Alenia," was a division of Finmeccanica, S.p.A. Finmeccanica's ownership structure changed in 1999, and again in 2000, but its owners have been, in varying degrees, the Italian Treasury Ministry, IRI (a company wholly owned by the Italian Treasury Ministry), and partial public ownership by listing of shares on the Milan stock exchange. Alenia became Alenia Spazio, S.p.A. on April 1, 2000, and is wholly owned by Finmeccanica.

and faxes were sent between Alenia in Italy and Aksamentov at his home in Houston. Reid alleges that in December of 1997, an oral joint venture was created between USRT and Alenia at a meeting in Rome. In January of 1998, representatives of USRT and Alenia met in Moscow. That same month, two Alenia representatives spent one day in Houston negotiating a Memorandum of Agreement ("MOA"). A representative of Alenia signed this MOA ("January 27, 1998 MOA") in Italy.

RSCC transferred its control of the orbital slots to Inspace, another Russian company, in the spring of 1998. In April of the same year, USRT, Alenia, and Inspace signed an MOA, the first signed by these three parties, in which they outlined various concepts that might be used to develop and implement the Plan; however, this MOA stated that "[e]xcept as to the confidentiality provisions of Section 6 which is meant to be binding, this Memorandum is expressly acknowledged to be an aid to further discussions between the Parties and neither creates nor implies the existence of any contractual rights or obligations among the Parties as to the subjects addressed herein."

Shortly thereafter, Alenia and USRT signed another MOA ("May 12, 1998 MOA") which expressly superseded the January 27, 1998 MOA. The May 12, 1998 MOA contained a provision choosing the laws of the United Kingdom and providing that London would be the place for arbitration of any disputes between the parties. The May 12, 1998 MOA stated that, upon the execution of a legally enforceable contract and upon acquiring sufficient financing, Alenia would purchase fifty percent of the equity of USRT. However, any obligations that might have existed under the May 12, 1998 MOA were expressly conditioned on the acquisition of credit facilities for $450 million and $100 million. Reid alleges in his petition that this funding was never obtained, and the Italian Companies agree that this is correct.

On May 15, 1998, Alenia, USRT, and Inspace signed an MOA ("May 15, 1998 MOA") that superseded the April

1998 MOA. This MOA stated that "[e]xcept as to [certain confidentiality and exclusivity provisions] which are meant to be binding [sic] this MOA is expressly acknowledged to be an aid to further discussions among the Parties in order to reach binding, final agreements on the subject matter hereof and neither creates nor implies the existence of any contractual rights or obligations among the Parties as to the subjects addressed herein." In May of 1998, Aksamentov faxed a letter to Alenia requesting a $100,000 advance of a $500,000 loan to cover USRT operating costs. Alenia subsequently wired $50,000 to a bank in Pennsylvania to be forwarded to a USRT account. Alenia's wiring instructions indicated that USRT had a Roswell, Georgia address, but USRT produced a USRT account that reflects a $50,000 credit, and shows a Houston, Texas address.

According to Aksamentov, the "Italians" recommended that USRT should be wholly owned by an Italian citizen to increase the chances of funding from the Italian government. Reid alleges that USRT was sold in October of 1998 to USRT Holdings, L.L.C., a Delaware company owned by Capra (then retired from the Italian Navy). According to Reid, USRT was purchased for $300 million, to be paid from future revenues earned by USRT in the alleged joint venture. Aksamentov was chairman of the board and chief executive officer of USRT before its sale; after the sale, he remained chairman of the board but was chief operating officer for Russian Affairs rather than chief executive officer. Reid alleges that Capra became the chief executive officer after the sale. Later, in March of 1999, Aksamentov resigned from all of his positions with USRT. Reid was appointed chief financial officer of USRT after its acquisition, and Jon Reed was made its president. Capra gave a five percent ownership interest in USRT Holdings to each. Reid later acquired Reed's five-percent interest.

Reid claims that in May of 1999, Davide Siniscalchi, USRT's chief operating officer, told him about a meeting that had taken place in Rome on May 19, 1999, between Capra and Giuseppe Viriglio of Alenia, during which the two men

allegedly discussed a proposal in which USRT would transfer its rights in the alleged joint venture to Alenia in exchange for Alenia "issuing" a lump sum payment of between $20 million and $30 million as well as unspecified future compensation to Capra, Siniscalchi, Reed, and Reid. Reid contends this arrangement would have allowed USRT to avoid financial obligations to its former members by ensuring that USRT did not earn any income from the alleged joint venture. Reid asserts that he and Reed both refused to participate in this proposal and were fired in August of 1999. Reid alleges Alenia later terminated the May 12, 1998 MOA and the alleged joint-venture agreement on grounds that implementation of the Plan was too remote and unlikely.[2] The record shows that, on December 20, 1999, Alenia sent a letter to Siniscalchi stating that the May 12, 1998 MOA was no longer in effect and indicating that there was no relationship between USRT and Alenia regarding the Plan. Reid alleges the first replacement satellite was launched in late 1999, with financing from Alenia, but without USRT involvement. Reid also contends additional satellites have since been launched and are being developed.

Reid filed derivative claims on behalf of USRT and USRT Holdings, L.L.C. against the Italian Companies, Siniscalchi, and Capra. These claims relate to the alleged joint-venture agreement.[3] The Italian Companies filed special appearances contesting personal jurisdiction. After a hearing at

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[2] Under its own terms, the May 15, 1998 MOA expired on July 14, 1998, because the parties had not entered into any binding final agreement for implementation of the first phase of the Plan.

[3] Reid asserts the following claims against the Italian Companies: (1) breach of an alleged joint-venture agreement on behalf of USRT; (2) breach of an alleged fiduciary duty arising out of the alleged joint-venture agreement with USRT; (4) **[*sic*, (3)]** conversion of USRT assets, including the right to participate in and receive profits from the Plan; and (5) **[*sic*, (4)]** tortious interference with an alleged contract between USRT and Inspace.

which no additional evidence was presented, the trial court denied the special appearances. By this interlocutory appeal, the Italian Companies now challenge the trial court's decision.

II. Standard of Review

Whether the Italian Companies are subject to personal jurisdiction in Texas is a question of law subject to de-novo review. *BMC Software Belgium, N.V. v. Marchand*, 83 S.W.3d 789, 794 (Tex. 2002). The trial court did not issue any findings of fact or conclusions of law. Therefore, all facts necessary to support the trial court's ruling and supported by the evidence are implied in favor of the trial court's decision. *Id.* at 795. Parties may challenge the legal and factual sufficiency of these implied factual findings. *Id.* In conducting a no-evidence analysis, we review the evidence in a light that tends to support the disputed findings and disregard all evidence and inferences to the contrary. *Lee Lewis Constr., Inc. v. Harrison*, 70 S.W.3d 778, 782 (Tex. 2001). If more than a scintilla of evidence exists, it is legally sufficient. *Id.* More than a scintilla of evidence exists if the evidence furnishes some reasonable basis for differing conclusions by reasonable minds about a vital fact's existence. *Id.* at 782–83.

When reviewing a challenge to the factual sufficiency of the evidence, we examine the entire record, considering both the evidence in favor of, and contrary to, the challenged finding. *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986). After considering and weighing all the evidence, we set aside the fact finding only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *Pool v. Ford Motor Co.*, 715 S.W.2d 629, 635 (Tex. 1986). The trier of fact is the sole judge of the credibility of the witnesses and the weight to be given to their testimony. *GTE Mobilnet of S. Tex. v. Pascouet*, 61 S.W.3d 599, 615–16 (Tex. App.—Houston [14th Dist.] 2001, pet. denied). We may not substitute our own judgment for that of the trier of fact, even if we would reach a different answer on the evidence. *Maritime Overseas Corp. v. Ellis*, 971 S.W.2d 402, 407 (Tex.

1998). The amount of evidence necessary to affirm a judgment is far less than that necessary to reverse a judgment.[4] *Pascouet*, 61 S.W.3d at 616.

III. Analysis and Discussion

In their two issues, the Italian Companies challenge the trial court's implied findings of specific and general jurisdiction. The Texas long-arm statute governs Texas courts' exercise of jurisdiction over nonresident defendants. Tex. Civ. Prac. & Rem. Code §§ 17.041– .045; *Guardian Royal Exch. Assur. Ltd. v. English China Clays, P.L.C.*, 815 S.W.2d 223, 226 (Tex. 1991). It allows courts to exercise personal jurisdiction "as far as the federal constitutional requirements of due process will permit." *BMC Software*, 83 S.W.3d at 795. Thus, we rely on precedent from the United States Supreme Court and from other federal courts, as well as Texas decisions, in determining whether a nonresident defendant has shown the exercise of personal jurisdiction violates federal due process guarantees. *Id.*

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[4] Reid claims the Italian Companies have waived any legal or factual sufficiency challenges to the trial court's implied findings of fact because their briefing contains no issues or argument explicitly asserting that these findings are not supported by legally or factually sufficient evidence. Although the Italian Companies have not explicitly challenged the trial court's implied findings of fact, their briefing does assert that USRT's principal place of business was not in Texas, and they cite evidence in the record in support of this argument. The Italian Companies also argue that they have not been involved in any transaction in Texas and that the record does not show that the Italian Companies have sufficient contacts with Texas to satisfy specific or general jurisdiction. We conclude that a challenge to the trial court's implied findings in favor of jurisdiction is a subsidiary question fairly included in the Italian Companies' issues and that the Italian Companies have sufficiently briefed this challenge. *See* Tex. R. Civ. P. 38.1 (e), (h), 38.9; *Stephenson v. LeBoeuf*, 16 S.W.3d 829, 843–44 (Tex. App.—Houston [14th Dist.] 2000, pet. denied).

Personal jurisdiction over a nonresident defendant is constitutional when two conditions are met: (1) the defendant has established "minimum contacts" with the forum state, and (2) the exercise of jurisdiction comports with "traditional notions of fair play and substantial justice." *BMC Software,* 83 S.W.3d at 795. A nonresident defendant that has "purposefully availed" itself of the privileges and benefits of conducting business in Texas has sufficient contacts to allow Texas courts to exercise personal jurisdiction over the nonresident. *Id.* Although not determinative, foreseeability is an important consideration in deciding whether the nonresident defendant has purposefully established "minimum contacts" with Texas. *Id.* The concept of "foreseeability" is implicit in the requirement that there be a "substantial connection" between the Italian Companies and Texas arising from the Italian Companies' conduct purposefully directed toward Texas. *See Guardian Royal Exch. Assur., Ltd.*, 815 S.W.2d at 227. A defendant should not be subject to a Texas court's jurisdiction based upon random, fortuitous, or attenuated contacts. *BMC Software Belgium, N.V.*, 83 S.W.3d at 795.

A. Did the trial court properly conclude that it could exercise personal jurisdiction over the Italian Companies based on specific jurisdiction?

In conducting a specific-jurisdiction analysis, we must focus on the relationship among the Italian Companies, Texas, and the litigation.[5] *See Guardian Royal Exch. Assur., Ltd.*, 815 S.W.2d at 228. Specific jurisdiction exists when the plaintiff's claims arise from or relate to the defendant's purposeful contacts with Texas. *American Type Culture Collec-*

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[5] The Italian Companies assert that Reid did not allege any act by the Italian Companies in Texas and that, therefore, they only had to prove that they are nonresidents of Texas to be entitled to dismissal. *See Siskind v. Villa Found. for Educ., Inc.*, 642 S.W.2d 434, 438 (Tex. 1982). After reviewing Reid's original and supplemental petitions, we conclude Reid satisfied this pleading requirement.

tion, Inc. v. Coleman, 83 S.W.3d 801, 806 (Tex. 2002). Reid argues the Italian Companies are subject to specific jurisdiction in Texas for the following reasons: (1) Reid's breach-of-contract claim arises from or relates to the Italian Companies' purposeful contacts with Texas; (2) the evidence shows that the Italian Companies' alleged tortious conduct occurred, in part, in Texas; and (3) the Italian Companies engaged in alleged tortious conduct outside of Texas that was expressly aimed at Texas, knowing that the brunt of the injury from their conduct would be felt by USRT in Texas.

Reid's Breach-of-Contract Claim

Reid alleges that the Italian Companies breached an oral joint-venture agreement with USRT that allegedly was formed in Italy in December of 1997. Reid claims the Italian Companies breached this agreement by excluding USRT from the Plan and by failing to share revenues received from the execution of the Plan. The Plan contemplated obtaining rights from the Russian government to certain orbital slots for communications satellites. These satellites were to have been manufactured by Alenia in Italy with financing from the Italian government, and then placed in geosynchronous orbit over Russia by means of launches from stations located in Russia. Reid's affidavit indicates that, on May 19, 1999, in Rome, Alenia and USRT discussed the possibility of USRT transferring any and all rights in the Plan to Alenia; however, there is no indication in the record that such a transfer ever occurred.[6] Rather, Reid's affidavit states that he and Jon Reed were terminated from their respective positions at USRT in August of 1999, immediately after they refused to go along

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[6] Virgilio testified at his deposition that he did meet with a representative of Inspace (Topalov) and Capra on May 19, 1999, but that Viriglio did not participate in any conversations about transferring anything away from USRT. However, for purposes of this appeal, we presume for the sake of argument that the discussion occurred as stated in Reid's affidavit.

with such a transfer of rights by USRT.[7] According to Reid, after these events, in late 1999, Alenia began implementing the Plan without USRT's participation. Virglio's deposition shows that, on December 20, 1999, Alenia sent a letter to Siniscalchi in Illinois, as a representative of USRT, stating that the May 12, 1998 MOA was no longer in effect and indicating that there was no relationship between USRT and Alenia regarding the Plan. Therefore, the Italian Companies' alleged breach of the purported oral joint-venture agreement occurred in late 1999, when, Reid claims, the Italian Companies put the Plan into effect without USRT's participation.[8]

Reid asserts his claims based on his stock ownership in USRT Holdings and by means of a double derivative action in which, acting on behalf of USRT Holdings, he asserts a claim on behalf of USRT. *See* TEX. BUS. CORP. ACT art. 5.14K (stating that derivative actions involving foreign corporations are governed by the law of the state of incorporation, except as to procedural issues not relating to the internal affairs of the corporation); *Sternberg v. O'Neil*, 550 A.2d 1105, 1124 (Del. 1988) (describing double derivative action under Delaware law). Though Reid is asserting a breach-of-contract claim that allegedly belongs to USRT, any recovery in this case would go to USRT Holdings, not USRT. *See Sternberg*, 550 A.2d at 1124.

Reid asserts that this breach-of-contract claim arises from or relates to the following contacts with Texas:

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[7] Reid's affidavit states that USRT terminated Reed in August of 1999, and that USRT terminated Reid from his position as manager and board member in August of 1999. However, Reid's affidavit states USRT did not terminate Reid from his position as chief financial officer until September 8, 1999.

[8] In conducting the jurisdictional analysis, we do not adjudicate the merits of Reid's claims, and it should be noted that, in a deposition taken in September of 2002, Viriglio denied that Alenia had taken any active role in implementing the Plan.

- Alenia's alleged joint-venture agreement with USRT, a company that Reid claims had a principal place of business in Houston, Texas, at all material times;
- Alenia's negotiation in Houston, Texas of the January 27, 1998 MOA relating to the alleged joint venture;
- Alenia's entering into the MOAs that contemplated performance, in part, in Texas;
- Alenia's numerous communications with Texas by telephone and facsimile;
- Alenia's wiring money to USRT in connection with the alleged joint venture.

In many respects the facts are not disputed, but the parties vigorously dispute the principal place of business of USRT. Reid claims that it is in Texas, and the Italian Companies claim it is in Georgia. Aksamentov admitted in his affidavit that the MOAs between Alenia and USRT state that USRT's principal place of business is in Roswell, Georgia. Further, USRT sent Alenia a document entitled "Brief History of USRT" that stated "[o]perations of USRT are directed from USRT's offices in Atlanta, Georgia." Other evidence suggests the principal place of business may have been in Texas. Aksamentov testified that, in January of 1998, he sent Alenia a copy of USRT's "operating agreement." Although he does not further describe this document, and though our record contains no document by that name, we presume for the sake of argument that Aksamentov sent Alenia the USRT Limited Liability Company agreement that is contained in our record. This document states that as of January 3, 1997, the principal office of USRT is in Houston, Texas.

Under the applicable standards for evaluating the conflicting evidence as to the location of USRT's principal place of business, we conclude that there is legally and factually sufficient evidence to support the trial court's implied finding that USRT had a principal place of business in Texas from its creation until August of 1999. However, we find the evidence

legally insufficient to support an implied finding that USRT's principal place of business was in Texas after Reed's termination in August of 1999. The uncontroverted evidence shows that USRT never had any employees, that USRT did not compensate its officers, and that the only activities conducted by USRT were actions taken by its officers relating to the Plan. In this context, it is somewhat difficult to determine what the principal place of business of USRT was at any given time. Nonetheless, there is no evidence in the record of any remaining officers operating in Texas, or of any activity by USRT in Texas, after USRT terminated Reed in August of 1999.[9]

Based on our evaluation of the quality and nature of the Italian Companies' contacts with Texas, we conclude that their alleged breach of contract did not arise from or relate to these contacts. *See Guardian Royal Exchange Assur., Ltd.*, 815 S.W.2d at 224 n.11 (Tex. 1991) (stating that, in analyzing minimum contacts, it is not the number, but rather the quality and nature of the nonresident defendant's contacts with Texas that is important). The Italian Companies are alleged to have breached an oral joint-venture agreement, allegedly created in Italy, that concerned the Plan — a program that was centered in Italy and Russia and involved financing from the Italian government and approval of the Russian government.

The Italian Companies allegedly breached this contract in late 1999, when they went forward with the Plan, in Italy and Russia, without USRT's participation. At the time of this alleged breach, USRT did not have its principal place of business in Texas. Further, after October of 1998, and at the time of the alleged breach, USRT was wholly owned by USRT Holdings, which is ninety percent owned by an Italian citizen

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[9] The record shows that after Reed's departure, Reid, a Canadian citizen, continued as chief financial officer until September 8, 1999, when he ceased to be an officer. The others continuing to serve as officers were Siniscalchi, an alleged Illinois resident, and Capra, a citizen and resident of Italy.

(Capra) and ten percent owned by a Canadian citizen (Reid). Even though USRT's principal place of business may have been in Texas until August of 1999, Reid's claim seeking monetary recovery in favor of USRT Holdings — based on the breach of an alleged agreement made in Italy and allegedly breached in Russia and Italy — does not arise from or relate to the Italian Companies' purposeful contacts with Texas. *See American Type Culture Collection, Inc.*, 83 S.W.3d at 806; *Magnolia Gas Co. v. Knight Equip. & Mfg. Corp.*, 994 S.W.2d 684, 691–93 (Tex. App.—San Antonio 1998, no pet.) (finding no specific jurisdiction over contract assignees despite contract with Texas corporation, partial performance in Texas, communications with Texas, and sending payments to Texas).

Contracting with a Texas entity alone does not satisfy the minimum-contacts requirement. *See Old Kent Leasing Servs. Corp. v. McEwan*, 38 S.W.3d 220, 230 (Tex. App.—Houston [14 Dist.] 2001, no pet.). Here, there is also some evidence of funds being credited to a USRT account with a Texas address. Although it is not clear that Alenia knew that the payment was going to a Texas account because the wiring instructions indicated that the money was being sent to a bank in Pennsylvania, to be forwarded to USRT, the record contains evidence that Alenia wired $50,000 to USRT and that this amount was credited to a USRT account with an address in Houston, at a time when USRT's principal place of business was in Texas. Nevertheless, sending funds to Texas is not determinative. *See Shell Compañia Argentina De Petroleo, S.A. v. Reef Exploration, Inc.*, 84 S.W.3d 830, 839 (Tex. App.—Hous. [1 Dist.] 2002, no pet.). Likewise, numerous telephone and facsimile communications with people in Texas relating to an alleged contract do not establish minimum contacts. *TeleVentures, Inc. v. International Game Tech.*, 12 S.W.3d 900, 910 (Tex. App.—Austin 2000, pet. denied); *Magnolia Gas Co.*, 994 S.W.2d at 691–92.

Reid relies on *Fish v. Tandy Corp.*, 948 S.W.2d 886, 895 (Tex. App.—Fort Worth 1997, pet. denied). The *Fish* court found specific jurisdiction in a Texas corporation's action for

a declaration of the rights and duties under a letter agreement executed by the nonresident defendant and the Texas corporation after negotiations that included personal visits by the defendant to Texas. *See id.* at 890–95. In this case, however, the basis of Reid's suit is his allegation of an oral joint-venture agreement allegedly formed during a meeting in Italy in December of 1997. There is no evidence of prior negotiations regarding this alleged joint venture in Texas. Therefore, we conclude *Fish* is distinguishable.

Although the evidence shows that two Alenia representatives negotiated the terms of the January 27, 1998 MOA during a one-day meeting in Houston, Alenia signed this document in Italy. Furthermore, the January 27, 1998 MOA was superseded by the May 12, 1998 MOA, which contained a choice of law provision mandating application of United Kingdom law and providing for arbitration in London. The May 12, 1998 MOA did recite that, upon the execution of a legally enforceable contract and upon acquiring sufficient financing, Alenia would purchase fifty percent equity in USRT. However, any obligations that might have arisen under the May 12, 1998 MOA were expressly conditioned on the acquisition of credit facilities for $450 million and $100 million. The parties do not dispute that this financing was never obtained. In this context, we conclude that negotiation of a superseded MOA during a one-day meeting in Houston and the potential obligation to purchase USRT stock that never came to fruition are not sufficiently related to Reid's claims to support specific jurisdiction.[10] *See TeleVentures, Inc.*, 12 S.W.3d at 910.

Reid's Tort Claims

Reid also alleges that the Italian Companies engaged in tortious conduct, in part, in Texas. According to his pleadings, the Italian Companies breached fiduciary duties to

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[10] To the extent that Reid alleges tortious conduct based on the same actions alleged under the breach-of-contract theory, the same analysis applies.

USRT by wrongfully removing USRT from the alleged joint venture, converting and misappropriating the joint venture's assets, and usurping the joint venture's business opportunities. However, based on the record before us, the only asset that Reid claims was converted and the only opportunity he claims was usurped was USRT's alleged rights to develop and profit from the Plan as part of the alleged joint venture with Alenia. Therefore, though Reid is entitled to plead various torts, both his breach-of-fiduciary-duty claim and his conversion claim are based on Alenia's alleged wrongful removal of USRT from the alleged joint venture. The record shows that if Alenia continued the development and implementation of the Plan without USRT, it would have done so in Italy and Russia. Further, Alenia's December 20, 1999 letter to USRT — stating that the May 12, 1998 MOA was no longer in effect — was sent to Siniscalchi in Illinois. After reviewing the record, we find no evidence that this alleged wrongful removal occurred in Texas in such a manner as to support specific jurisdiction. *See BMC Software Belgium, N.V.*, 83 S.W.3d at 796–97 (finding no evidence of tort committed in Texas).

Reid also asserts that Capra, Siniscalchi, and the Italian Companies conspired to wrongfully remove USRT from the alleged joint venture. However, the only evidence in the record that arguably might relate to such a conspiracy is Reid's description of a phone call from Siniscalchi in which Siniscalchi allegedly described discussions in Rome, between Viriglio of Alenia and Capra of USRT. Reid claims these discussions occurred in Italy, not in Texas. Even if Reid were in Texas when Siniscalchi telephoned him,[11] Siniscalchi's act in making this phone call to Reid cannot be counted as a contact of Alenia with Texas, because Siniscalchi was an officer of USRT, not an agent or representative of Alenia. *See National Indus. Sand Ass'n v. Gibson*, 897 S.W.2d 769, 773 (Tex. 1995) (stating alleged co-conspirator's contacts with Texas

[11] The record does not reflect where Reid or Siniscalchi were located during this phone call.

cannot be counted as contact of other alleged co-conspirators). There is no evidence that any alleged conspiratorial conduct by the Italian Companies occurred in Texas.[12]

Reid also claims that Alenia directed Reed, a Texas resident, to commit a tort in Texas by asking him to approve and participate in an allegedly tortious proposal for USRT to transfer its rights in the alleged joint venture to Alenia in exchange for payments to Reed and others. However, there is no evidence that Alenia ever directed Reed to do this. In any event, Reid testified in his affidavit that Reed refused to be part of this alleged proposal, and Reid does not allege or seek recovery for any damages based on any conduct by Reed in following Alenia's alleged direction to participate in this proposal.

Finally, as to Reid's contention that the Italian Companies tortiously interfered with agreements between USRT and the Russian company Inspace, there is no evidence in the record that any of the alleged interference took place in Texas. *See BMC Software Belgium, N.V.*, 83 S.W.3d at 796–97 (finding no evidence of tort committed in Texas). In sum, the record contains no evidence that the Italian Companies' alleged tortious conduct occurred in Texas.

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[12] Reid asserts that *General Elec. Co. v. Brown & Ross Int'l Distributors, Inc.* stands for the proposition that a defendant who participates in a conspiracy known to impact Texas has satisfied the requirements for specific jurisdiction. *See* 804 S.W.2d 527, 533 (Tex. App.—Houston [1st Dist.] 1990, writ denied). We disagree. Although the analysis is difficult because the *Brown & Ross* court never identifies what tort claims the plaintiff in that case was asserting, the court did not state that mere participation in a conspiracy known to impact Texas was sufficient. *See id.* Rather, the *Brown & Ross* court concluded that there was jurisdiction because the record showed that the defendant in question knew *his conduct* would affect Texas customers. *See id.* This is consistent with the *Calder v. Jones* line of cases discussed in the next section. *See Calder v. Jones*, 465 U.S. 783, 789–90, 104 S. Ct. 1482, 1487, 79 L. Ed. 2d 804 (1984).

Brunt of Alleged Injury under Reid's Tort Theories

Reid also asserts that, even if Alenia's allegedly tortious conduct occurred outside of Texas, the exercise of specific jurisdiction is still appropriate because Alenia's actions were expressly aimed at Texas and Alenia knew that the brunt of the alleged injury caused by this conduct would be felt by USRT in Texas. *See Calder v. Jones*, 465 U.S. 783, 789–90, 104 S. Ct. 1482, 1487, 79 L. Ed. 2d 804 (1984); *Rittenmeyer v. Grauer*, 104 S.W.3d 725, 735 (Tex. App.—Dallas 2003, no pet.). Even assuming for the sake of argument that Alenia engaged in tortious conduct and knew that this conduct would harm USRT, Reid's petition and affidavit both state that this conduct occurred after USRT terminated Reid and Reed. At the time of the alleged tortious conduct, USRT was a Delaware corporation owned by USRT Holdings, with no employees and no officers or directors in Texas. Therefore, we conclude Alenia could not have expressly aimed its allegedly tortious conduct at Texas or known that the brunt of any injury from such conduct would be felt in Texas.

Reid's affidavit indicates that on May 19, 1999, an Alenia representative (Viriglio) and Capra, while in Rome, discussed the possibility of USRT transferring its rights in the alleged joint venture to Alenia in exchange for a lump sum to be paid to Capra, Siniscalchi, Reed, and Reid. There is no evidence that any such transfer ever occurred. Instead, the evidence shows Alenia sent a letter dated December 20, 1999, stating the May 12, 1998 MOA was no longer in effect, and Reid alleges that in late 1999, the Italian Companies implemented the Plan without USRT's participation. Therefore, this alleged proposal never came to fruition and cannot be evidence that Alenia committed a tort directed at Texas with the knowledge that the brunt of the injury would be felt in Texas. Accordingly, we find personal jurisdiction cannot be based on this theory.

On this record, we conclude that the Italian Companies' very limited contacts with Texas relating to the subject matter of this lawsuit are insufficient to support the exercise of spe-

cific jurisdiction.

B. Did the trial court properly conclude that it could exercise personal jurisdiction over the Italian Companies based on general jurisdiction?

General jurisdiction is a more demanding minimum-contacts analysis, requiring a showing that the defendants conducted substantial activities within the forum. *CSR, Ltd. v. Link*, 925 S.W.2d 591, 595 (Tex. 1996). General jurisdiction does not require that the plaintiff's claims arise from or relate to the defendants' activities purposefully directed to Texas. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414, 104 S. Ct. 1868, 1872, 80 L. Ed. 2d 404 (1984). General jurisdiction exists when the defendant in question has "continuous and systematic general business contacts" with the forum state. *Id.*, 466 U.S. at 416, 104 S. Ct. at 1873; *American Type Culture Collection, Inc.*, 83 S.W.3d at 809. General jurisdiction is based upon the concept of a bargain between the nonresident defendant and the forum state. If the defendant has established continuous and systematic general business contacts with the state, it is deemed to have purposely availed itself of the protections and benefits of the forum's law, and thereby to have consented to suit in the forum. *See Bearry v. Beech Aircraft Corp.*, 818 F.2d 370, 375 (5th Cir. 1987). In conducting a general-jurisdiction analysis, we are concerned with the quality rather than the quantity of the contacts. *See American Type Culture Collection, Inc.*, 83 S.W.3d at 809–10. In assessing the quality of the contacts, we do not view each contact in isolation; rather, we carefully investigate, compile, sort, and analyze all contacts to determine if together they are sufficient to support general jurisdiction. *See id.* at 809.

In addition to the contacts identified in the specific-jurisdiction analysis, Reid asserts the following contacts support the trial court's implied finding of general jurisdiction:

- Under Alenia's contract with the Italian Space Agency relating to the International Space Station Project ("Space Station Project"), one Alenia em-

ployee worked as a representative of the Italian Space Agency at an office in the Johnson Space Center (the "Space Center") in Texas from 1996 until 2000, another Alenia employee worked in the same capacity from November of 1999 to the present, and another from December of 2001 to the present.

- Since 1998, at least 117 employees of Alenia have traveled to the Space Center in connection with the Space Station Project, averaging at least fifty employees traveling per year, with an average of more than ten days in Texas per employee.
- Since 1998, at least sixty different employees of Alenia have directed communications by telephone, facsimile, mail, or e-mail to individuals located at the Space Center in connection with the Space Station Project.
- On at least two occasions, Alenia sent a shipment from Italy to the Space Center.
- The Italian Companies had a contract with The Dee Howard Company, a Texas corporation and subsidiary of Finmeccanica, that contains a Texas choice-of-law provision and contemplates performance in Texas.

Since 1996, under its contract with the Italian Space Agency, Alenia has had at least one and sometimes two employees at the Space Center in Texas. Acting as representatives of the Italian Space Agency, these Alenia employees provide technical support and liaison services relating to the Space Station Project. The Space Station Project has nothing to do with the dispute that is the basis of this suit. Although the presence of at least one Alenia employee in Texas since 1996 has been continuous, our jurisdictional inquiry and analysis does not end there. We must determine if this contact and the other contacts reflected in the record constitute "continuous and systematic general business contacts" with Texas. *See Helicopteros Nacionales de Colombia, S.A.*, 466 U.S. at 416, 104 S. Ct. at 1873; *American Type Culture Col-*

lection, Inc., 83 S.W.3d at 809.

The record shows the one or two Alenia employees present at the Space Center were given use of a telephone and an office at the Space Center. The extension for this telephone was listed in the phone directory for the Space Center under the general heading "Italian Space Agency" and an individual entry under a subheading "Alenia Representative." These employees were present at the Space Center pursuant to a $300 million contract between Alenia and the Italian Space Agency. The record does not reflect how much Alenia has been paid for providing these employees on location at the Space Center; however, given the nature and magnitude of the contract (to design and build components of the Space Station Project), the compensation for providing these two employees is likely a small part of the $300 million contract price. Further, the record shows the Italian Companies are organized and exist under Italian law, have principal places of business in Italy, are not qualified or authorized to conduct business in Texas, do not maintain an inventory in Texas, and have no sales representatives, distributors, brokers or wholesalers in Texas. Moreover, nothing in the record suggests the Italian Companies have undertaken any efforts to exploit Texas markets. They have no bank accounts or listings in any public telephone directory in Texas. They have not commenced suit in any Texas state courts or filed claims in any Texas proceedings. They have not paid taxes or franchise fees in Texas, do not regularly advertise in Texas, and have no authorized agents to accept service of process in Texas.

Reid argues that general jurisdiction exists because Alenia has had an office at the Space Center since 1996. However, having an office in the forum state does not require a finding of general jurisdiction. *See Submersible Sys., Inc. v. Perforadora Central, S.A. de C.V.*, 249 F.3d 413, 419 (5th Cir. 2001) (having a construction project and maintaining an office with three employees in forum state did not satisfy standard for general jurisdiction); *Villar v. Crowley Maritime Corp.*, 780 F. Supp. 1467, 1480–81 (S.D. Tex. 1992) (stating that simply having an office in the forum state does not es-

tablish general jurisdiction), *aff'd* 990 F.2d 1489 (5th Cir. 1993). The significance of this contact depends on the type and nature of office maintained. If a defendant maintains a permanent general business office through which it solicits business in Texas, then this factor tends to weigh strongly in favor of general jurisdiction. *See James v. Illinois Cent. Railroad Co.*, 965 S.W.2d 594, 598 & n.1 (Tex. App.—Houston [1st Dist.] 1998, no pet.) (holding there was general jurisdiction where defendant solicited business in Texas through general business office). There is nothing to suggest Alenia maintained such an office in Texas. Rather, the record indicates that (1) Alenia was provided the use of an office, including a telephone line, at the Space Center to allow its employees to provide technical support and liaison services relating to the Space Station Project; and (2) this office contained the logo for the Italian Space Agency, not the logo for Alenia. The record indicates that Alenia does not utilize this office to promote or market its goods or services in Texas, or for any purpose other than supporting the Space Station Project. The nature of this office and its very limited purpose and function significantly diminish the quality of the Italian Companies' contacts with Texas.[13]

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[13] Reid asserts that *Perkins v. Benguet Consolidated Mining Co.* shows that a company need not target the forum market for there to be general jurisdiction. *See* 342 U.S. 437, 72 S. Ct. 413, 96 L. Ed. 485 (1952). However, the *Perkins* case involved unusual facts. In *Perkins*, the defendant company's regular business operations in the Philippines were completely halted during the occupation of the Philippines by Japan, and the company's principal stockholder effectively transferred the company's main office to Ohio during the Japanese occupation of the Philippines. *See id.*, 342 U.S. at 447–49, 72 S. Ct. at 419–20. *Perkins* may indicate that targeting the forum-state market is not necessary if the defendant's regular business operations are halted and the center of corporate decision-making is transferred to the forum state, but these are not the facts before us in this case. *See American Type Culture Collection, Inc.*, 83 S.W.3d at 809–10 (distinguishing *Perkins*).

Further, the record shows that the only reason Alenia sent employees to the Space Center is that this location was chosen by the National Aeronautics and Space Administration ("NASA") as the location for these services. Alenia has contracts with the Italian Space Administration, the European Space Administration, and a German space agency relating to the Space Station Project. The record indicates that (1) these contracts require Alenia to perform various services in coordination with NASA; (2) the contracts do not specifically require Alenia to perform services in Texas; (3) NASA decided that some of these services would be performed at the Space Center in Texas; and (4) before entering into these contracts Alenia understood that some of its services would be performed at the Space Center. NASA, rather than the Italian Companies, decided that some of Alenia's services under the contracts with three European entities would be performed at the Space Center. We conclude that the nature of this arrangement also significantly diminishes the quality of these contacts and does not indicate that the Italian Companies purposefully directed their business activity at Texas. *See American Type Culture Collection, Inc.*, 83 S.W.3d at 809 (discounting quality of contacts regarding defendant's attendance at five conferences in Texas because defendant did not select the location of the conferences); *Reyes v. Marine Drilling Cos., Inc.*, 944 S.W.2d 401, 402–04 (Tex. App.—Houston [14th Dist.] 1997, no writ) (discounting quality of contacts where defendant sent representatives to Texas at least 204 times to perform quality-assurance inspections, because these inspections were necessitated by defendant's contractual obligations with the United States government); *Conner v. ContiCarriers and Terminals, Inc.*, 944 S.W.2d 405, 417–18 (Tex. App.—Houston [14th Dist.] 1997, no writ) (plurality op.) (discounting quality of contacts in which defendant's customer, not defendant, chose Texas destination for transportation services); *Asarco, Inc v. Glenara, Ltd.*, 912 F.2d 784, 787 (5th Cir. 1990) (finding no jurisdiction and discounting quality of contacts regarding 20 port calls of vessel in forum state because company that managed vessels did not choose

where vessels would make port); *Conner v. Bouchard Transp. Co., Inc.*, 1994 A.M.C. 258, 1993 WL 388274, at *1–*3 (E.D. Pa. 1993) (finding no general jurisdiction despite over 100 port calls in forum state by defendant-owner's vessel, because all visits were prompted by chartering agreement in which charterer determined destination of defendant's vessels); *American Overseas Marine Corp. v. Patterson*, 632 So.2d 1124, 1126–30 (Fla. App. 1994) (finding no jurisdiction and discounting quality of contacts relating to port calls in forum state because they were not by the choice of defendants but at the direction of the United States military under contracts with the United States).

The record also contains a contract between Alenia and The Dee Howard Company, a Texas corporation owned by a subsidiary of Finmeccanica. Though this contract contains a Texas choice-of-law provision, it has no forum-selection provision. Reid asserts that by agreeing to this Texas choice-of-law provision, Alenia availed itself of the benefits and protections of Texas law and consented to being sued in Texas. We disagree. By agreeing to a Texas choice-of-law provision, a party does not avail itself of any protection from Texas courts or voluntarily submit to personal jurisdiction in Texas courts, absent an express understanding to that effect. *See Moni Pulo Ltd. v. Trutec Oil and Gas, Inc.*, —S.W.3d—, —, 2003 WL _____, at *2 & n.15 (Tex. App.—Houston [14th Dist.] Dec. 4, 2003, no pet. h.). There is no evidence in the record of an express understanding that Alenia submitted to the jurisdiction of Texas courts by executing the contract with The Dee Howard Company. Moreover, the significance of this contract and its Texas choice-of-law provision is diminished by the fact that the contract is contingent upon Alenia seconding employees to The Dee Howard Company to perform the services anticipated to be performed under the contract. The record contains no evidence that Alenia ever seconded employees to The Dee Howard Company or that any services were ever performed under this contract. In this context, and from a qualitative standpoint, we do not view this contract and its choice-of-law provision as a significant contact in the

general-jurisdiction analysis.

In *Reyes v. Marine Drilling Cos., Inc.*, this court found no general jurisdiction despite the following contacts of the defendant with Texas:

(1) The defendant had purchased goods in excess of $183 million in Texas from at least 471 persons and/or companies in Texas.

(2) The defendant had purchased over $63.3 million in products from a company in Houston, Texas and had entered into contracts with that company for equipment purchases and repairs.

(3) The defendant, as purchaser, had entered into 303 contracts and/or agreements with a company in Conroe, Texas.

(4) The defendant advertised for employees in five periodicals in Texas.

(5) The defendant had sold $851,511.88 worth of scrap metal to Texas companies, all of which was delivered in Mississippi.

(6) The defendant had sent representatives to Texas on at least 204 occasions to perform quality-assurance inspections necessitated by the defendant's obligations under contracts with the United States.

Despite the large quantity of contacts in *Reyes*, this court concluded there was no personal jurisdiction under a general-jurisdiction analysis because the record did not show a general business presence in Texas. *See id.* at 404–05. The defendant did not have a business office in Texas and did not distribute or market its products in Texas. *See id.* Similarly, in this case, there is no evidence the Italian Companies advertised or promoted their goods or services in Texas, solicited business in Texas, sold their goods or services to a Texas entity, established a general business office or general business presence in Texas, or targeted Texas markets.

After carefully analyzing the nature and quality of the Italian Companies' contacts with Texas, we find no continuous and systematic general business contacts with Texas such that these companies can be deemed to have consented to being sued in Texas. *See Helicopteros Nacionales de Colombia, S.A.*, 466 U.S. at 416, 104 S. Ct. at 1873 (holding there was no general jurisdiction even though defendant sent its chief executive officer to Texas for a contract-negotiating session, accepted into its bank account checks drawn on a bank in Texas, purchased $4 million of goods and equipment from a company in Texas, and sent employees to Texas for training and technical consultation); *Submersible Sys., Inc.*, 249 F.3d at 419–21 (holding that having a construction project in forum state and maintaining an office with three employees in forum state did not satisfy standard for general jurisdiction); *Strick Corp. v. A.J.F. Warehouse Distribs., Inc.*, 532 F. Supp. 951, 956–60 (E.D. Pa. 1982) (holding there was no general jurisdiction despite defendant's office in forum over four-year period because record did not show that defendant targeted the forum-state market or made a substantial number of sales in the forum); *CSR, Ltd.*, 925 S.W.2d at 595 (stating there must be an indication that defendant intended to serve the Texas market before personal jurisdiction may be found); *Michel v. Rocket Eng'g Corp.*, 45 S.W.3d 658, 671–82 (Tex. App.—Fort Worth 2001, no pet.) (holding record did not support general jurisdiction because it did not show that defendant created a general business presence in Texas through continuing and systematic activities); *Reyes*, 944 S.W.2d at 402–04 (holding there was no general jurisdiction despite defendant's purchase of large amounts of supplies from Texas companies and sending representatives to Texas at least 204 times to perform quality-assurance inspections). Therefore, we conclude a Texas court may not exercise personal jurisdiction over the Italian Companies under a general-jurisdiction theory.

C. Did the trial court properly conclude that exercising personal jurisdiction over the Italian Companies would comport with traditional notions of fair

play and substantial justice?

In addition to sufficient minimum contacts with Texas, federal due process requires that the exercise of personal jurisdiction comport with traditional notions of fair play and substantial justice. *See Guardian Royal Exch. Assur., Ltd.*, 815 S.W.2d at 228. In deciding this issue, the court should consider the following factors:

- the burden on the defendants;
- the interests of the forum state in adjudicating the dispute;
- the plaintiff's interest in obtaining convenient and effective relief;
- the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and
- the shared interest of the several states in furthering fundamental substantive social policies.

Id. When, as here, the defendants are residents of another nation, the court should also consider:

- the unique burdens placed on the defendant who must defend itself in a foreign legal system;
- the procedural and substantive policies of other nations whose interests are affected by the assertion of jurisdiction by a state court; and
- the United States government's interest in its foreign-relations policies.

Id. at 229.

In considering the burden the Italian Companies would face were they forced to defend in Texas, we note that the record indicates that all official business records of USRT relating to the Plan are in Houston, Texas, and that potential witnesses Aksamentov, Reed, and Larry Bell reside in Texas. However, Reid, the plaintiff, resides in Canada. Other poten-

tial witnesses also reside outside of Texas — Siniscalchi (residing in Illinois), Capra (residing in Italy), current and former Alenia employees and Finmeccanica employees (residing in Italy), and third-party witnesses from Inspace and RSCC (residing in Russia). Though Alenia employees have traveled to Texas under contracts that Alenia has with the Italian Space Agency, the European Space Agency, and a German space agency, the record shows that, other than a suit filed by the former shareholders of USRT, the Italian Companies have never been sued in Texas. Allowing the suit to proceed in Texas would be expensive and burdensome for the Italian Companies and it would force them to defend against Reid's claims in a foreign legal system. *See id.* at 229.

Most significantly, we find that the interests of Texas in adjudicating this dispute are minimal. Reid, a Canadian resident and citizen, is asserting a double derivative action against two Italian companies, which, if successful, would result in a judgment in favor of USRT Holdings, a Delaware holding company owned ninety percent by an Italian resident and ten percent by a Canadian resident (Reid). The claim upon which USRT Holdings would recover at the request of Reid belongs to USRT. Although there is evidence to support a finding that USRT's principal place of business was in Texas through August of 1999, there is no evidence that its principal place of business has been in Texas since that time. Because this dispute does not involve any Texas entity and cannot result in a judgment in favor of any Texas entity, we conclude that Texas's minimal interest in this dispute strongly militates against the assertion of jurisdiction in this case. *See id.* at 23–33 **[*sic*, 223-33]** (holding exercise of jurisdiction would offend traditional notions of fair play and substantial justice where Texas did not have a compelling interest in providing a forum for resolution of claims in which plaintiffs sought reimbursement for a non-Texas insurer, even though two of the plaintiffs were Texas corporations with principal places of business in Texas and even though the facts of the case involved a deceased Texas employee); *Bearry*, 818 F.2d at 377 (holding assertion of juris-

diction would be unreasonable primarily because suit implicated virtually no distinct interest of Texas).

Though the parties have thoroughly briefed most other aspects of the jurisdictional analysis, they have provided little assistance in assessing the procedural and substantive policies of other nations whose interests would be affected by a Texas court's assertion of jurisdiction. We note, however, that Reid seeks a multi-million-dollar judgment against Alenia, an Italian company, and its parent, Finmeccanica, an Italian company in which Italian government entities own a 34 percent interest. Further, Reid seeks to recover based on an alleged plan that contemplated obtaining rights from the Russian government to certain orbital slots for communications satellites, manufactured by Alenia in Italy with financing from the Italian government, and placed in geosynchronous orbit over Russia by means of launches from stations in Russia. These facts raise important concerns regarding the substantive policies of Italy and Russia and the impact that the exercise of jurisdiction might have on the United States government's foreign-relations policies vis-a-vis these countries.

As for Reid's interest in obtaining convenient and effective relief, we note that Reid testified that litigating this matter in Italy would place a tremendous financial burden on him. Certainly litigating this dispute in Texas may be more cost-effective and convenient for Reid; however, it is not clear that his interest in effective relief will be better served by a Texas judgment. The United States is not party to any multilateral convention regarding recognition of foreign judgments. *See* Alan Reed, *A New Model of Jurisdictional Propriety For Anglo-American Foreign Judgment Recognition and Enforcement: Something Old, Something Borrowed, Something New?* 25 LOY. L.A. INT'L & COMP. L. REV. 243, 245 n.1 (2002). To obtain effective relief against the assets of the Italian Companies in Italy, if he becomes entitled to it, Reid, at some point, will have to convince the appropriate decisionmakers in the Italian judicial system that, under Italian law, he is entitled to enforce a valid Texas judgment

against the Italian Companies, despite the absence of a bilateral treaty on this subject between Italy and the United States. Thus, although it may be less expensive and more convenient for Reid to litigate in Texas, the relief he can obtain here against the Italian Companies may not be more effective. *See Insurance Co. of N. Am. v. Marina Salina Cruz*, 649 F.2d 1266, 1273 (9th Cir. 1981) (stating that potential difficulties enforcing American judgment in foreign country may be considered in weighing the plaintiff's interest in obtaining convenient and effective relief); *In re Baldwin-United Corp.*, 607 F. Supp. 1312, 1330 (S.D.N.Y. 1985) (stating, in context of class-action settlement, that effective relief is essentially a judgment that is collectible and practical). Therefore, we find this factor does not weigh strongly in favor of the reasonableness of a Texas court exercising personal jurisdiction over the Italian Companies.

After considering all applicable factors and interests, we conclude that the exercise of personal jurisdiction by a Texas court over the Italian Companies would be unreasonable and would offend traditional notions of fair play and substantial justice.

IV. CONCLUSION

In grappling with these difficult jurisdictional issues, the trial court observed that this case presented "a tough call," but ultimately found the Italian Companies subject to jurisdiction in Texas and denied their special appearances. We agree with the trial court's characterization, but not with its ruling. We find no basis for personal jurisdiction. Reid's claims do not arise from or relate to the Italian Companies' purposeful contacts with Texas and thus provide no basis for specific jurisdiction. Moreover, the record does not show that the Italian Companies have established continuous and systematic general business contacts with Texas sufficient to support general jurisdiction. Furthermore, the exercise of personal jurisdiction over them would be unreasonable and would offend traditional notions of fair play and substantial justice.

Having found that the Italian Companies are not subject to the jurisdiction of the trial court, we sustain the two issues they have asserted on appeal, reverse the trial court's order denying their special appearances, and remand this case to the trial court with instructions to dismiss the claims against the Italian Companies for lack of personal jurisdiction.

/s/ Kem Thompson Frost

Justice

Judgment rendered and Majority Opinion filed December 23, 2003.

Panel consists of Justices Edelman, Frost, and Seymore. (Edelman, J., dissents without filing an opinion).

December 23, 2003

[State Seal]

JUDGMENT

The Fourteenth Court of Appeals

ALENIA SPAZIO, S.P.A. AND FINMECCANICA, S.P.A.,
Appellants

NO. 14-03-00366-CV V.

DENNIS A. REID, Appellee

This cause, an appeal from the order in favor of appellee, DENNIS A. REID, signed March 13, 2003 was heard on the transcript of the record. We have inspected the record and find error in this order. We therefore order the order of the court below **REVERSED** and **REMAND** the cause with instructions to dismiss the claims against appellants ALENIA SPAZIO, S.P.A. and FINMECCANICA, S.P.A. for lack of personal jurisdiction and for proceedings in accordance with the court's opinion.

We order appellee, DENNIS A. REID, to pay all costs incurred in this appeal. We further order this decision certified below for observance.

CAUSE NO. 2002-12305

DENNIS A. REID,	§	IN THE DISTRICT
	§	COURT OF
Plaintiff,	§	
	§	
v.	§	
	§	HARRIS COUNTY,
	§	TEXAS
USRT HOLDINGS,	§	
L.L.C., U.S. RUSSIAN	§	
TELECOMMUNICA-	§	
TIONS, L.L.C.,	§	
VINCENZO DAVIDE	§	
SINISCALCHI,	§	
GIORGIO CAPRA,	§	
ALENIA SPAZIO AND	§	
FINMECCANICA,	§	
	§	
Defendants.	§	281ST JUDICIAL
	§	DISTRICT

ORDER DENYING SPECIAL APPEARANCES OF ALENIA SPAZIO AND FINMECCANICA

Came on for consideration the Special Appearances filed by Defendants Alenia Spazio and Finmeccanica (collectively "Defendants") in the above-styled and numbered cause. After considering the pleadings on file, special appearances, response thereto, and admissible evidence, the Court enters the following order pursuant to Rule 120a(4) of the Texas Rules of Civil Procedure:

It is hereby ORDERED, ADJUDGED and DECREED that the Special Appearances filed by Alenia Spazio and Finmeccanica are DENIED.

SIGNED this the 13 day of March, 2003.

/s/ Jane Bland
JUDGE PRESIDING

Justices

LESLIE BROCK YATES
JOHN S. ANDERSON
J. HARVEY HUDSON
WANDA MCKEE FOWLER
RICHARD H. EDELMAN
KEM THOMPSON FROST
CHARLES SEYMORE
EVA M. GUZMAN

[State Seal]

Fourteenth
Court of Appeals
1307 San Jacinto, 11th Floor
Houston, Texas 77002

Chief Justice

ADELE HEDGES

Clerk

EDWARD E. WELLS, JR.

Phone 713/655-2800
Facsimile 713/650-8550
Email: 14thcoa@courts.state.tx.us
www.14thcoa.courts.state.tx.us

Thursday, April 08, 2004

George W. Vie, III
Mills Shirley L.L.P.
2228 Mechanic Street
Suite 400
Galveston, TX 77553

John P. Cooney
Davis Polk & Wardwell
450 Lexington Avenue
New York, NY 10017

Anne M. Pike
Beck, Redden & Secrest
1221 McKinney
Suite 4500
Houston, TX 77010-2010

Michael Ernest Richardson
Beck, Redden & Secrest
1221 McKinney
Suite 4500
Houston, Texas 77010

RE: Court of Appeals Number: 14-03-00366-CV
Trial Court Case Number: 02-12305

Style: Alenia Spazio, S.P.A. and Finmeccanica, S.P.A.
v.
Dennis A. Reid

Please be advised that on this date the Court **OVER-RULED** appellee's motion for rehearing in the above cause.

ED WELLS, CLERK

By _____
Deputy

Justices

LESLIE BROCK YATES
JOHN S. ANDERSON
J. HARVEY HUDSON
WANDA MCKEE FOWLER
RICHARD H. EDELMAN
KEM THOMPSON FROST
CHARLES SEYMORE
EVA M. GUZMAN

[State Seal]

Fourteenth
Court of Appeals
1307 San Jacinto, 11th Floor
Houston, Texas 77002

Chief Justice

ADELE HEDGES

Clerk

EDWARD E. WELLS, JR.

Phone 713/655-2800
Facsimile 713/650-8550
Email: 14thcoa@courts.state.tx.us
www.14thcoa.courts.state.tx.us

Thursday, April 08, 2004

George W. Vie, III
Mills Shirley L.L.P.
2228 Mechanic Street
Suite 400
Galveston, TX 77553

John P. Cooney
Davis Polk & Wardwell
450 Lexington Avenue
New York, NY 10017

Anne M. Pike
Beck, Redden & Secrest
1221 McKinney
Suite 4500
Houston, TX 77010-2010

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Beck, Redden & Secrest
1221 McKinney
Suite 4500
Houston, Texas 77010

RE: Court of Appeals Number: 14-03-00366-CV
Trial Court Case Number: 02-12305

Style: Alenia Spazio, S.P.A. and Finmeccanica, S.P.A.
v.
Dennis A. Reid

Please be advised that on this date the Court **OVER-RULED** appellee's motion for en banc consideration in the above cause.

ED WELLS, CLERK

By _____
Deputy

[State Seal] OFFICIAL NOTICE FROM
SUPREME COURT OF TEXAS
Post Office Box 12248
Austin, Texas 78711-2248

RE: Case No. 04-0461 DATE: 8/26/2005
COA #: 14-03-00366-CV TC#: 2002-12305
STYLE: DENNIS A. REID
v. ALENIA SPAZIO, S.P.A. AND FINMECCANICA, S.P.A.

Today the Supreme Court of Texas denied the petition for review in the above-referenced case. Justice Willett not sitting.

MAIL TO: MS. CLAUDIA WILSON FROST
MAYER BROWN ROWE & MAW LLP
700 LOUISIANA STREET SUITE 3600
HOUSTON TX 77002-2730

[State Seal] OFFICIAL NOTICE FROM
SUPREME COURT OF TEXAS
Post Office Box 12248
Austin, Texas 78711-2248

RE: Case No. 04-0461 DATE: 3/10/2006
COA #: 14-03-00366-CV TC#: 2002-12305
STYLE: DENNIS A. REID
v. ALENIA SPAZIO, S.P.A. AND FINMECCANICA, S.P.A.

Today the Supreme Court of Texas denied the motion for rehearing of the above-referenced petition for review.

MAIL TO: MS. CLAUDIA WILSON FROST
MAYER BROWN ROWE & MAW LLP
700 LOUISIANA STREET SUITE 3600
HOUSTON TX 77002-2730